A STUDY OF THE UTAH COMMISSION

1882-96

by

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INTRODUCTION

Cushman, in his basic work "The Independent Regulatory Commission," states that the first such federal body was the Interstate Commerce Commission established in 1887.[1] He makes a list of such agencies, past and present, which does not include the Utah Commission. Cushman further concludes, and most writers in the public administration field agree, that the early federal regulatory bodies developed from the pattern set by the states in their control of railroads and canals and that regulatory agencies have been almost solely engaged in the control of some phase of the economic process.[2] The completeness of Cushman's list, the validity of the assumptions as to the priority of the Interstate Commerce Commission in the federal regulatory field, and the conclusion as to the derivation of national regulatory agencies, may be subject to some modifications when the history and activities of the Utah Commission are considered. That body, which operated for fourteen years (1882-96), was established by the Edmunds Act of 1882, and possessed the major characteristics of the modern regulatory agency--the status of semi-independence and the exercise of legislative,

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[1]Robert E. Cushman, The Independent Regulatory Commissions (New York: Oxford University, 1941), p. 4.

[2]Ibid., p. 19.

judicial, and executive powers. It differed from its later federal counterparts in that it operated to control the political rather than the economic process. Its mission was to expedite the extirpation of polygamy through achieving the transfer of political power in the Territory of Utah from the hands of the ruling polygamist "elite," centered primarily in the hierarchy of the Mormon church, to the hands of the non-polygamist and non-Mormon. Such transfer of power was to be accomplished by the administration of the provisions of the Edmunds law of 1882, which gave to the Utah Commission the power to supervise the entire electoral process in Utah and to enforce the provisions of that law which disfranchised and barred from public office all polygamists. Thereby, it was hoped that, through their loss of political power and the diminution of their rights as citizens, polygamists would be so stigmatized and penalized that the abandonment of the practice of polygamy by the members of the Mormon church would be hastened. Certainly this assignment of transferring political control from a well entrenched, dominant group to a naturally non-dominant group represented an administrative problem fraught with great challenge, and involved one of the very unusual, if not unique, objectives in the annals of American public administration. The work of the Commission was both aided and complicated by the necessity of accomplishing its mission through the administration of

laws which denied to American citizens some of their more cherished political privileges because of their religious convictions and consequent actions. It was required to carry on its administration and apply its sanctions among a people possessing very deep religious and political convictions and the firm belief that the laws administered by the Commission were unnecessary, unwise, and unconstitutional.

It is possible that Cushman intended to confine his treatment to those regulatory agencies exercising economic controls on a national scale and therefore intentionally eliminated the Utah Commission from his list. However, it is more likely that the activities of that Commission had not come to his attention inasmuch as it has received only brief, and at times inaccurate, treatment in professional publications,[1] and heretofore has not been the subject of an extensive study. An analysis of its origin, powers, practices, and achievements, therefore, possesses both historical and

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[1]The attention of students of public administration was perhaps first called to the Utah Commission by G. Homer Durham. See his article: "A Political Interpretation of Mormon History," Pacific Historical Review, XIII, No. 2 (June 1944), 144; cf. Nels Anderson, Desert Saints (Chicago: University of Chicago Press, 1942), pp. 310-14; Robert Joseph Dwyer, The Gentile Comes to Utah (Washington, D. C.: The Catholic University of America Press, 1941), pp. 215-49 passim. The Commission also receives treatment in some Utah histories. The best accounts are found in Orson F. Whitney, History of Utah (Salt Lake City: George Q. Cannon & Sons, 1898), Vols. III and IV passim; B. H. Roberts, A Comprehensive History of the Church of Jesus Christ of Latter-day Saints (Salt Lake City, Utah: Deseret News Press, 1930), Vol. VI passim.

analytical values. It will have value as history in so far as it relates a story which has not been fully told. Its analytical phases may contribute valuable information and concepts to the areas of public administration and politics, and may offer some suggestions to those presently engaged in attempting to shape, through administrative means, the political process in foreign areas such as Germany and Japan where a strong emotional attachment to non-American practices attains.

CHAPTER I

THE EDMUNDS ACT--BACKGROUND AND PASSAGE

Part I--The Background

No governmental control agency springs full blown into activity. Such an agency is the result of a long process of synthesis of many forces. It is the combined product of scientific development, social change, private interest, public opinion, and personal prejudice, all modified by the constitutional and legal system. Usually such agencies develop when other means of control have failed. The Utah Commission followed such a pattern. It was the resultant product of twenty years of unsuccessful effort on the part of the federal government to stamp out the practice of polygamy among the Mormon people in the Territory of Utah. Just as one must understand the American idea of competition and the historical development and scientific nature of radio and television in order to appreciate the establishment, problems, and functions of the Federal Communications Commission, so one must understand certain basic history, organization, and tenets of Mormonism, some Utah political and social history, and the efforts of the federal government to control polygamy, in order to appreciate the reasons for the establishment, the problems and techniques of the Utah Commission.

The practice of polygamy among the Mormons[1] was first instituted on a small scale while they were living in Nauvoo, the city which their industry had raised from the swamp lands of the Mississippi to be the largest in the State of Illinois. There, according to Mormon claims, their Prophet and the founder of Mormonism, Joseph Smith, received a revelation from God concerning the doctrine of celestial

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[1]The term "Mormon" applies to the members of the Church of Jesus Christ of Latter-day Saints, which was organized April 6, 1830, at Fayette, New York. The history of its early years was one of repeated persecutions and hardship. Its members were forced to move from New York to Missouri, to Illinois, and then to the wilderness of Utah. Some of its terminology will help the reader. The head of the Mormon church is known as the "President." He is aided by two Councilors, the three being known as the "First Presidency." They exercise great influence over the operation of the Church and are aided in their work by a "Quorum of Twelve Apostles." This group is often referred to as "The Twelve." Each member thereof is known as an "Apostle." The Church is divided into geographic areas known as "stakes." These vary in size depending on the density of Mormon population and are presided over by a "Stake President" and his two Councilors. The stakes are, in turn, divided into geographical areas known as "wards." These have at their head a "Bishop" and two Councilors, who are aided by numerous minor officials. The Mormon church has no paid clergy as such and does not require specific academic training to hold office or to preach. It claims a priesthood which is given to all worthy male members, which priesthood gives the member the right, when called by proper authority, to preside in the various church offices and officiate in its ordinances. It maintains as one of its basic doctrines that of revelation.

For good discussions of the administrative organization of the Mormon church cf. G. Homer Durham, "Administrative Organization of the Mormon Church," 57 Political Science Quarterly 50-71 (March 1942); "Coordination by Special Representatives of the Chief Executive," Public Administration Review, VIII, No. 3 (Summer 1948); cf. John A. Widtsoe, Priesthood and Church Government (Salt Lake City, 1939).

marriage. This doctrine included several concepts, but for the purposes of this paper it is sufficient to note that it provided divine sanction and command for worthy male members of the "Church" to possess a plurality of wives.[1] A small number of the leading brethren of the Church, having been taught quietly by the Prophet Joseph the doctrine of celestial marriage, followed his teachings and example and took plural wives while in Nauvoo.[2] However, the first public preaching of the doctrine did not take place until August 29, 1852,[3] after the Mormons had been driven out of Nauvoo, had made their historic trek across the plains, and had been in the remote Salt Lake valley for approximately five years. At that time there were no laws, either territorial or federal, which prohibited polygamy in the territories of the

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[1]Joseph Smith, The Doctrine and Covenants (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1833-1921), sec. 132.

[2]Joseph Smith, History of the Church (Salt Lake City: Deseret News Press, 1902) pp. 500-7; cf. Fawn McKay Brodie, No Man Knows My History (New York: A. A. Knopf, 1945); Harry M. Beardsley, Joseph Smith and his Mormon Empire (New York: Houghton Mifflin & Co., 1931); William Alexander Linn, The Story of the Mormons (London: The Macmillan Company, 1923), pp. 272-81; H. H. Bancroft, History of Utah (San Francisco: The History Publishing Co., 1889), p. 162. Perhaps the best evidence in this connection comes from the personal diaries of those who entered polygamy at the time. For example, cf. "Diary of Elizabeth M. Partridge Lyman," (MS, 1820-1855, Brigham Young University Library, Provo, Utah).

[3]Deseret News, September 14, 1852; Millennial Star (Liverpool: Official Publication of Church of Jesus Christ of Latter-day Saints, XV Supplement 1853), p. 33.

United States. Critics of Mormonism might comment that the basic law of Christian morality should have been sufficient; but the Mormons, acting under what they determined to be divine admonition, felt that they were living in accord with a higher law than the rest of Christendom.[1]

Within four years after the doctrine of polygamy had been publicly announced, it had gained sufficient national attention to merit a place in the platform of the newly formed Republican Party adopted at Philadelphia, July 17, 1856. That document averred that it was "both the right and imperative duty of Congress to prohibit in the Territories those twin relics of barbarism--polygamy and slavery."[2] Legislative attempts to carry out this provision of the platform followed immediately. Within ten days, June 25, 1856, Republican representative, Justin S. Morrill of Vermont, had secured a favorable report from the House Committee on Territories for the first piece of anti-polygamy legislation.

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[1]The Mormons consider themselves to be the most advanced type of Christians, accepting the basic Christian doctrines and also additional revelations. Cf. James E. Talmadge, Articles of Faith (Salt Lake City: Church of Jesus Christ of Latter-day Saints, 1924), p. 537; Jesus the Christ (Salt Lake City: Deseret News, 1915); Brigham H. Roberts, The Gospel (Salt Lake City: George Q. Cannon & Sons, 1893); A New Witness for God (Salt Lake City: Deseret News, 1909); William E. Berrett, Doctrines of the Restored Church (Salt Lake City: Deseret Book Co., 1941); Lowell L. Bennion, The Religion of the Latter-day Saints (Salt Lake City: Church of Jesus Christ of Latter-day Saints Department of Religion, 1940).

[2]Thomas H. McKee, National Conventions and Platforms (Baltimore: The Friendenwald Company, 1906), p. 98.

The measure, however, was never debated and died at the end of the Congress.[1] A second attempt by the Vermont Congressman failed in 1858.[2] In 1860 he neared success when one of his anti-polygamy bills was passed by the House but died in the Senate under the opposition of the squatter-sovereignty Democrats, who feared that if Congress should make polygamy illegal, "it may be claimed that we can also render criminal that other twin relic of barbarism--slavery."[3] Success crowned Mr. Morrill's efforts, however, in 1862 when the Republican Congress passed his anti-bigamy act which provided that: (1) any married person whose spouse was living and undivorced, who married any other person, could be adjudged guilty of bigamy, (2) Utah ordinances which incorporated the Church of Jesus Christ of Latter-day Saints, or otherwise aided polygamy, were annulled, (3) no religious or charitable corporation could own more than $50,000 worth of real estate.[4] The bill was signed by President Lincoln, but little attempt was made to enforce it. The pressure of the Civil War, Lincoln's attitude toward the Mormons, summarized in his succinct phrase, "let them alone,"[5] and the difficulty of

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[1] Congressional Globe, 34th Cong., 1st Sess., p. 1491.

[2] Ibid., 35th Cong., 1st Sess., (1857-58), pp. 184-5, 2114.

[3] Ibid., p. 2114.

[4] 9 Stat. 453.

[5] Andrew Love Neff, History of Utah (Salt Lake City: Deseret News Press, 1940), p. 868.

making successful prosecutions under the terms of the Act, all combined to forestall aggressive enforcement. As a result, the Mormons paid little heed to the restrictions of the measure and continued their practice of plural marriage. They justified themselves not only in the conviction of the divinity of the practice but also in the assurance that the law was an illegal invasion of their fundamental constitutional right of freedom of religion, for they maintained that polygamy was a basic tenet of their faith.

The fact that little repressive action was taken under the Morrill Act seemed only to stimulate public opinion in opposition to the Mormons and their peculiar institution. Before the end of the decade, several anti-polygamy measures were discussed in Congress; and three specific bills, containing severe provisions, were introduced: The Wade,[1] the

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[1]Introduced by Senator Benjamin F. Wade of Ohio, in June 1866, provided among other things: (1) the complete subordination of the territorial militia, hitherto created and regulated by territorial law, to the president-appointed governor, (2) the selection of grand and petit juries by the United States Marshal, and the appointment of probate judges in the counties by the governor, (3) the prohibition of marriage ceremonies by Mormon church officials, (4) annullment of those sections of the territorial law which exempted the real and personal property of the Mormon church from taxation, (5) the repeal of those provisions which had given the Church authority to make rules and regulations with regard to fellowship in the Church, and (6) the stipulation that the trustee-in-trust of the Church, under penalty of fine and imprisonment, be required to make a full report, under oath, each year to the governor of the Territory accounting for all church properties, bank deposits, notes, etc. See: Neff, op. cit., pp. 868-9.

Cragin,[1] and the Cullom.[2] None became law; but the Cullom bill is significant because it was written by a leading "Gentile"[3] lawyer of Salt Lake City, Mr. R. N. Baskin,[4] and contained most of the provisions which were later enacted

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[1]Introduced by Senator Aaron H. Cragin, of New Hampshire, Dec. 13, 1867. It retained many of the oppressive features of the Wade Bill, and in addition "proposed to abolish trial by jury in cases arising under the Anti-Bigamy Act of 1862, and authorized prosecution on information by the prosecuting attorney, instead of indictment by grand jury." Ibid., p. 169.

[2]Introduced by Representative Cullom in 1869. Provided, among other things: (1) in all prosecutions for bigamy, etc., the lawful wife of the accused shall be a competent witness, (2) that all marriages must be recorded and published, (3) that in prosecutions for bigamy it shall not be necessary to prove by certificate or recorded evidence the existence of either first or subsequent marriage but the same may be proved by such evidence as is admissible to prove a marriage under common law, (4) a fine of $1,000, and imprisonment not exceeding five years, for those guilty of bigamy, (5) no alien living in bigamy could be admitted to citizenship, could hold any office, benefit from homestead laws, etc.

[3]In early Utah all non-Mormons were called "Gentiles." In this sense even a Jew was a Gentile.

[4]Mr. Baskin described the origin of the bill as follows: "By my investigations, I became convinced that existing evils could only be corrected by adequate legislation in Congress and therefore . . . I drafted the Cullom Bill. . . . I presented the draft of the bill in 1869 at Washington City to Senator Cullom, who was chairman of the House Committee on Territories, and after explaining its bearing on the Mormon question, he introduced it and had it referred to his committee. Captain Hooper and myself discussed it before the committee, he opposing and I favoring its adoption. The committee reported it to the House and recommended its passage." See: R. N. Baskin, Reminiscences of Early Utah (1914), p. 28.

into other measures.[1] It passed the House under the guidance of Representative Cullom, who challenged the members to either pass a measure sufficiently strong to "crush out the bold and defiant iniquity of polygamy,"[2] or repeal the Morrill measure, which had proved to be unenforceable. However, the bill died in the Senate through the lack of support of Senator Nye of Nevada, who as Chairman of the Committee on Territories, refused to push its passage.[3]

Following the death of the Cullom bill in 1870, there was a period of comparative legislative reaction with respect to polygamy. Other bills were introduced but proved unsuccessful. It was not until 1874 that a measure, authored by Representative Luke P. Poland of Vermont, became law. It provided major reforms in the Utah courts by: (1) restricting

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[1]Many of the provisions were later included in the Poland Act of 1874, the Edmunds Act of 1882, and the Edmunds-Tucker Act of 1887. See Baskin, op. cit., pp. 30-31.

[2]Ibid.

[3]Senator Nye's failure to push the measure is probably attributable to a dramatic speech given by his Nevada colleague in the House, Representative Thomas Fitch, who freely predicted that if the measure was passed and enforced it would be regarded by the Mormon people "as a declaration of war" and would develop a contest "most bitter, protracted and bloody." The results of such a contest would be: (1) the temporary obstruction if not the complete destruction of the great overland railroad, (2) the retardation of the industries of a great developing area, (3) the death of thousands of brave men, and the return of Utah to the desolateness which once rained supreme on her soil. See: Neff, op. cit., pp. 871-2.

the power of the locally controlled Probate Courts, (2) placing the common law in force,[1] (3) giving additional power to the United States Attorney and United States Marshal, and (4) providing a method of selecting jury lists which made certain that fifty percent of the persons selected would be non-Mormons.[2]

This measure, while providing severe stricture on the activities of the Mormons in the courts, did little to make active prosecution of polygamy easier and had only minor effect on the institution of polygamy itself. No additional legislation was passed until the Edmunds law of 1882.

Therefore, at the end of twenty-five years of legislative activity in opposition to polygamy, only two laws were on the statute books: the Morrill Act, which made the entrance into polygamy a crime, and the Poland law, which placed the control of the courts largely in the hands of the non-Mormons. Neither of the measures proved an effective deterent to polygamy. But the non-Mormons of Utah, the people of the nation, and the Congress were not to leave conditions in this

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[1]The Common Law was not in force in Utah until the passage of this law. The Utah legislature had not adopted the Common Law precedents, but instead had passed a law in 1854 prohibiting the use of such precedents. See Baskin, op. cit., p. 6; Compiled Laws of Utah (1866), p. 32.

[2]Supplement to the Revised Statutes of the United States, 1874-81 (Washington, 1881), chap. 469, pp. 105-9.

state of affairs for long. Agitation which led to the passage of the Edmunds law was to begin shortly.[1]

Political conditions in Utah.--Throughout the period under discussion, there had developed in Utah a bitter factionalism. Non-Mormons had come into the Territory in increasing numbers, especially after the Civil War. These, combined with the federal officials, composed one faction and the Mormons the other. The Mormons were zealous in propagating their "peculiar" doctrines and were somewhat resentful of the Gentile influx into their peaceful and isolated valley. The Gentiles, on the other hand, were aggressive in their criticism of Mormon doctrines and practices and resented the Mormon clannishness. These religious and social differences were soon accompanied by a split in politics. In 1867 the non-Mormons ran William McGroarty as the first Gentile candidate for Territorial Delegate.[2] He received only 105 votes but proceeded to contest the seat, the main purpose being "to direct the attention of Congress to the conditions in Utah."[3] This practice of contesting the seat of the delegate to Congress

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[1]For a full report on anti-polygamy legislation cf. Richard D. Poll, "The Twin Relic" (Unpublished Master's Thesis, Dept. of History, Texas Christian University, 1939); Joseph Robert Meservy, "A History of Federal Legislation Against Mormon Polygamy" (Unpublished Master's Thesis, Dept. of History, Brigham Young University, 1947).

[2]Baskin, op. cit., p. 23.

[3]Ibid.

continued for years as a tactic of the non-Mormon group. By 1870 the political schism had developed sufficiently that some of the Gentiles had organized themselves into what becomes known as the Liberal Party and the Mormons had formed the People's Party.[1] The Mormon People's Party completely dominated Utah politics for the next fifteen years. It elected every member of the legislature until 1885 when the Liberals managed to elect D. C. McLaughlin, of Park City, to the House of Representatives.[2] These parties developed a bitter rivalry that continued until changed conditions in Utah brought about a division on national party lines in the 1890's.

The newspapers of the Territory also took sides in the contest. The Salt Lake Tribune was a supporter of, and spokesman for, the non-Mormon or "Gentile" element of Utah, while the Deseret News was the official organ of the Mormons. Most of the other papers of the Utah Territory were pro-Mormon.[3]

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[1]For discussion on this movement see G. Homer Durham, "The Development of Political Parties in Utah: The First Phase," Utah Humanities Review, I, No. 2 (April 1947), 122-33.

[2]Utah Commission Minutes, B, 153. This seven volume work contains the complete original minutes of the Commission's activities. Inasmuch as it will be referenced frequently, it will be cited hereafter in abbreviated form as U. C. Minutes.

[3]In addition to the Salt Lake Tribune, the Anti-Polygamy Standard and the Ogden Pilot were vigorously anti-Mormon. For full report of newspapers in early Utah, see J. Cecil Alter, Early Utah Journalism (Salt Lake City, Utah: Utah State Historical Society, 1938).

The Reynolds case.--It was not until 1879 that a successful prosecution of a polygamist under the terms of the Morrill law was accomplished. Even then it required a friendly test suit to secure a conviction. The major reason for lack of successful prosecution was found in the fact that polygamous marriages were not made a matter of legal record; therefore, legal evidence to prove such marriages was impossible to secure without cooperation of persons or witnesses involved. Such cooperation was rare but was secured in the Reynolds case.

Prior to his death, August 29, 1877, Brigham Young had agreed with the federal attorneys that a friendly suit would be instituted to determine the constitutionality of the Morrill Act. It was agreed that the defendant, George Reynolds, would present evidence as to his polygamous relations, and that reliance for his freedom would be placed on the unconstitutionality of the law in question.[1] The lower courts found him guilty and the case was appealed to the Supreme Court, which upheld both Reynolds' conviction and the constitutionality of the Morrill law, on the theory that the prohibition of polygamy, or bigamy, was a restriction on personal action only, and not on religious belief. The court

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[1]Orson F. Whitney, History of Utah (Salt Lake City, Utah: George Q. Cannon and Sons Co., 1898), III, 46.

held that certain practices, such as polygamy, need not be tolerated merely because they were held as a part of a religious philosophy.[1] The Mormons, in spite of the Supreme Court ruling, still maintained their previous views on the unconstitutionality of the Morrill law and insisted that the Supreme Court had merely lent its strength to aid the persecutors of Mormonism.

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[1] Reynolds v. United States, 98 U.S. 145. Said Mr. Chief Justice Waite, speaking for the court:

"In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains, is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and, while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one religiously believed the human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

"So here, as a law of the organization of society, under the exclusive dominion of the United States, it has been prescribed that plural marriage shall not be allowed. Can a man excuse his practice to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and, in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

The Reynolds case, while determining that polygamy could not be legally practiced under the shield of religion, did nothing to aid in the prosecution of Morrill law violators. As a result, the law remained a dead letter and polygamists were immune to punishment, and the institution of polygamy continued firmly established among the Mormons.[1] Congressional legislation so far had proved ineffective.

Part II--The Passage of the Edmunds Act

The condition of ineffectiveness of both Congressional legislation and legal prosecution thereunder, in dealing with polygamy, was terminated by passage of the Edmunds law of 1882. That measure grew out of a tremendous anti-Mormon boom which spread nationwide during 1880-82.[2] The "drive" reached a successful climax during the Forty-seventh Congress, which was deluged with petitions and memorials demanding that effective anti-polygamy legislation be enacted. During the first session of that Congress, over

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[1] The Salt Lake Tribune charged that had Brigham Young lived to hear the result of the Reynolds case he would probably have abandoned polygamy. It stated that the leading Mormons "know" that when Brigham Young arranged for the case that "he designed to abandon polygamy (for the future) in case the law was pronounced constitutional. See: Salt Lake Tribune, April 12, 1882.

[2] The best reports of this anti-polygamy drive are found in Whitney, op. cit., pp. 102-221; Roberts, op. cit., pp. 1-100.

one hundred fifty anti-polygamy memorials and petitions were noted in the Congressional Record.[1] The members of Congress reacted to the pressure by introducing at least twenty anti-polygamy bills.[2] Among them a measure, S. 353, authored by Senator George F. Edmunds of Vermont, Chairman of the Judiciary Committee of the Senate. This measure, rather innocuous at the time of its introduction, was extensively amended in the Judiciary Committee mostly through the work of Senators Logan and Davis of Illinois who had long been active in anti-polygamy legislation. They, instead of Senator Edmunds, probably should be given credit for the authorship of the measure.[3] The Judiciary Committee reported the bill

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[1]The complete list is printed in the Congressional Record Index, 47th Cong., 1st Sess., XIII, 328. Typical organizations were: Conference of the Church of Christ, Alabama citizens, American Baptist Home Mission Society, Wilmington (Del.) Conference M. E. Church, General Assembly of the Presbyterian Church, Omaha Ministerial Association, Ministers Union of Buffalo, citizens groups from many states, the state legislatures of Michigan, New Jersey, and Wisconsin, etc.

[2]Ibid. For a complete list of all anti-polygamy bills, including those introduced at the first session of the Forty-seventh Congress, their authors, and legislative history see: Richard D. Poll, op. cit., pp. 393-4.

[3]Deseret News, February 15, 1882. Senators Logan and Davis of Illinois were both members of the Committee.

The fact that Senator Edmunds had not planned such a bill as was reported, is indicated by an article which he wrote for Harpers Weekly, January 1882, in which he expounded his ideas of the "lawful and just means" for the extinction of polygamy as being the encouragement of non-Mormon immigration to Utah, and the discouragement of the appropriation

January 24, and Senate debate thereon commenced February 15, 1882, with Senator Edmunds guiding the measure. Major debate centered around sections five, eight and nine of the bill, each of which had been added in Committee.[1]

Section five, which provided that any person who either practiced polygamy or believed such practice to be right, could be excluded by challenge from jury service in any trial involving charges of bigamy, polygamy, or unlawful cohabitation, was attacked by Senator John T. Morgan of Alabama as a denial of equal protection of the laws since its operation would result in a jury loaded against the defendent. Senator Wilkinson Call, of Florida, joined the attack, declaring that section five was worse "than open,

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of large tracts of the best land to or for the benefit of the Mormon church. He recommended an additional alternative which was the annexation of different parts of the Territory of Utah to other states and territories, thereby breaking up the Mormon political power. Had he planned the final Edmunds bill he would certainly have made some allusion to its provisions.

[1]Section one redefined polygamy so as to make it illegal not only for a married man with a living and undivorced wife to marry another, but also to make illegal the marriage of a single man to two women simultaneously. Section two protected any prosecutions begun under the 1862 Act. Section three created the misdemeanor of "unlawful cohabitation in the Territories of the United States. Section four permitted the joining of counts for all crimes included in the Act. Section six authorized the President of the United States to grant amnesty to offenders whose crimes against the polygamy laws preceded 1882. Section seven legitimated the issue of polygamous marriages.

flagrant war. It is an assertion by the Congress of the United States that there may be a trial by a packed and prejudiced court, by partial jurors, by a man's enemies and not his friends."[1] To this charge Senator Edmunds replied that in the type of cases under discussion it was impossible in Utah to get a jury that was not loaded one way or the other. If Mormons, who believed in the divinity of the doctrine of plural marriage, served as jurors, then the jury would be loaded in favor of the polygamist defendant. If non-Mormons who were anxious to punish violators of the anti-polygamy statutes were empanelled, then the jury was loaded on the side of the law, which was the preferable situation. Certainly, he argued, in the trial of a person for horse stealing, it would not be expected that the court would seat in the jury a large number of horse thieves, or those believing horse stealing to be a Christian duty.[2]

Section eight of the bill, which disfranchised and barred from public office all polygamists, bigamists, and those violating the provisions of the law against unlawful cohabitation, was also attacked by Senator Morgan who declared that it was a flagrant example of ex post facto legislation. He pointed out that a polygamist holding office under

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[1] Congressional Record, 47th Cong., 1st Sess., XIII, Part II, 1209.

[2] Ibid., p. 1213.

the territorial government of Utah would be instantly excluded from such office by the operations of the law, and that such exclusion was an additional penalty imposed after the commission of the alleged crime of polygamy.[1] He further attacked the measure as a bill of attainder, insisting that the bill was not to protect the purity of the ballot box but was to punish polygamists.[2] In this attack he was joined by Senator George G. Vest, of Missouri, who maintained that "if this be not a bill of attainder under the theory of the Constitution of the United States, there never has been a bill of attainder proposed in all history."[3] Senator

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[1] Ibid., p. 1198. Said Senator Morgan:
"I understand section 8 of the bill to mean that if a man now holds an office of honor, or a place of trust, or an office of emolument, under a Territorial government, or under the United States, in connection with a Territorial government, when this bill is signed it will operate eo instanti, to disqualify him from holding that office a moment longer, and deprive him instantly of it.
". . . This, Mr. President, is to all intents and purposes an ex post facto law. If I have rightly construed the language in which the eighth section is couched, it undertakes to create a crime and punish a man for the commission of it at a time before the statute itself was enacted, certainly before this method of punishment was prescribed; and, if I understand anything in reference to constitutional law, it is that you cannot impose a new punishment upon one who has been guilty even of a crime against the law, so as to make it retroactive in its effect and in its operation."

[2] Ibid., p. 1199.

[3] Ibid., p. 1200. Said Senator Vest:
"What I object to in this bill is that it is a bill of attainder, unconstitutional in the Territories, unconstitutional in the States, unconstitutional wherever the flag of the Republic waves today in supremacy. It is a bill of

Joseph E. Brown, of Georgia, claimed the bill was an unconstitutional violation of freedom of religion because it provided a religious test for jury service, voting, and holding office. He was especially critical of section nine which established the five man Utah Commission and empowered it to appoint all election officials and to control all electoral processes in Utah as being the ultimate in "carpetbag" rule. He noted the political implications involved in the establishment of the Commission, observing that "whenever it is necessary to make a Republican state out of a Democratic state, or territory, the most convenient machinery is a returning board." He called attention to the successful operation of such boards in the South, especially "the fraud, perjury, forgery, and villainy" exercised by the returning boards in the election of 1876, which "cheated the people of

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attainder because it inflicts a punishment, in the language of the Supreme Court of the United States, without trial by a judicial tribunal. . . . He who says it is not a punishment to deprive a man of office, gainsays and contradicts the decision of the Supreme Court of the United States, which I have just read. (Cummings v. Missouri, 4 Wall, 277.) If an office is taken from me of honor, of trust, of profit, I am disgraced and degraded; and yet I am told it is no punishment ! No punishment to take bread from my family! No punishment to stamp my name with infamy! No punishment to exclude me from the ranks of honorable association with my fellow men! It is an outrage to tell me that in this country of constitutional guarantees. What is this, if it is not a bill of attainder?"

For a good discussion of legislative acts as bills of attainder see: Francis D. Wormuth, "Legislative Disqualifications as Bills of Attainder," Vanderbilt Law Review IV, No. 3 (April 1951), pp. 603-19.

the United States out of a legal election for President." Senator George H. Pendleton, of Ohio, also caught the political implications of the bill when he told the Senate that this bill, if it becomes law, will transfer the political power of the territory to the Republican Party--a party which has 1500 votes out of 15,000."[1]

Senators Brown and Pendleton had quickly recognized the political advantage which a Commission, such as that proposed in the bill, would give to the Republican Party. A board, dominated by Republicans, empowered with full control over the promulgation of rules of election, the appointment of all registration agents, judges of election, and canvassing boards, and at the same time accountable to no one for its actions was such a situation as could hardly be improved upon from the standpoint of winning political control. Certainly the possibilities inherent in the bill would have made the hardiest and most successful Republican city or state boss green with envy.

Senator Edmunds denied the charge that the Republicans were attempting to take over the Territory, but frankly admitted the political aspect of the bill, stating that aside from its rather minor provisions the bill "proposed one single

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[1] Congressional Record, 47th Cong., 1st Sess., XIII, Part II, 1211.

thing"--to take the political power in the Territory of Utah out "of the hands of this body of tyrants" and to put it "into the hands of those who are not polygamists." He highlighted his remarks by asserting that the President of the Mormon church "controls in every respect every step in the Territorial operation" of Utah, and that the purpose of the bill was to remove from the Mormon church and its heirarchy the control of Utah affairs and return that Territory to a republican status.[1]

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[1]Of the purpose of the bill, Senator Edmunds said:
"We shall put the offices of that community into the hands of those who are not polygamists. That is all there is to it, and there is nothing more to it that can be stated.
"More than that and beyond that, it is not the mere practice of polygamy, bad as it is, but that happens to be an inherent and controlling force in the most intense and anti-republican hierarchy, theocracy, as an organized and systematic government that, so far as my small reading has gone, has ever existed on the face of the earth. The Church of Latter-day Saints, a corporation organized under the authority of Law, controls in every respect every step in the Territorial operations of that community. The three presidents, by step after step, the three first presidents, as they are called, but I believe the last one is the actual ruler in point of fact--you may disguise it and gloss it as you please--of the destiny and the fate of that people, polygamists, Mormons who are not polygamists and Gentiles. Is that republican? Can you tolerate in the heart of this continent of republics the building up of a State of that character? That is the question. If you cannot tolerate it, and have the power to dispose of it, are you willing to exert that power? That is the question. This bill is one step, only one step to that end. The Committee of the Judiciary have under consideration other and further measures, which I hope we shall report in due time, which will make up and supplement this measure, to eradicate, as far as just government may, not any man's faith or opinion but to bring the political community that exists within the boundaries of that Territory into its republican relations with the great Republic that surrounds it. That is all." See: Congressional Record, 47th Cong., 1st Sess., XIII, 1213.

Defending the bill both as to its advisability and constitutionality, he told the senate that the Judiciary Committee had concluded that Utah's republican government had been dissolved and replaced by an intolerable theocracy. Therefore, since Congress exercised supreme authority over the territories, it was the duty of Congress to restore Utah to its republican forms. To do so, Congress could act as if it were organizing a territory anew and could prescribe whatever system it desired to control the election machinery and insure to the Territory a republican government.[1] Certainly, argued Senator Edmunds, Congress possessed the power to make the political determination of who should vote and hold office in one of the territories of the United States.

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[1]Senator Thomas F. Bayard, of Delaware, expressed the committee point of view:

"Now the question simply is whether this bill is or is not a needful rule and regulation for the proper and wise government of that Territory; and you are to turn at this time the same machinery precisely that in countless cases you have employed for the purpose of setting in motion a Territorial government under republican forms. There must be a beginning. In this case there is necessity for what I may call a rebeginning. . . . Can it be denied that upon the organization originally of a Territorial government, the machinery of elections, the control of those elections by means of commissions and boards of canvass, could be exercised by Congress? If so, why can it not be now? I say as a legal proposition, that if Congress could originally in organizing a Territory provide by law for the machinery of casting . . . and declaring the result, they can as legitimately do so for the purpose of restoring republican government to that body of people, no matter from what cause or by what it has been displaced, as they could enact it originally." See: Ibid., p. 1157.

He maintained that such determination could, by no stretch of the imagination, be considered a bill of attainder. It was merely a political decision which every state must make as a basis for its functioning.[1] Inasmuch as the territories were under the complete control of Congress, then such rules were properly made by that body.[2]

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[1]Said Senator Edmunds:

"Now, on the theory of the committee that here is a state of things that requires the legislative action of the sovereign authority to put the political power of that Territory for the self-government that it is authorized to have--because Congress has given it to them and not otherwise--into the hands of those who are obedient to the law, and not to the hierarchy and the polygamists who are disobedient to it, we treat it as a reorganization of the Territorial Assembly; and therefore starting de novo, instead of leaving it to the governor of that Territory as we did in the first instance, we required the President and the Representatives of all the States to agree upon five persons to whom shall be intrusted the execution of the power of conducting one election. . . .

"The political power has a right to say that no man shall vote who gives alms, if you please; no man shall be a voter who is not fifty-five years of age. . . . The political power has a right to say that, and it is not necessary to send it to a court to try our age in advance. The political function goes on of determining through the agencies provided by the political law whether we come within the qualification; and the nature of the qualification is of no possible consequence to the principle of the political right of determining the status of the man who offers to vote." See: Ibid., p. 1212.

[2]This viewpoint, which denied that any constitutional of inherent rights existed in the territories, was certainly at odds with the statements of Justice Taney in the Dred Scot case:

"No one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceable to assemble, and to petition the

Debate on the measure in the Senate lasted for only five hours. It was passed by voice vote February 16, 1882.[1] All attempts to amend it in any major degree failed with but two important exceptions authored by Senator Brown, of Georgia. He succeeded in securing the adoption of a provision which stated that the Commission would be composed of no more than three members of any one political party, thereby making it a typical bi-partisan board. He won his point by the small margin of 26 yeas to 23 nays,[2] arguing successfully that the Commission, constituted as originally provided in the bill with four members of the dominant party, could, if the majority desired, intimidate or overpower the lone minority member, and thereafter pursue an improper or evil course, unchecked by substantial minority influence. Senator Brown's efforts in this regard were not altogether altruistic,

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Government for the redress of grievances.

"Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.

"These powers and others, in relation to rights of person, which it is not necessary here to enumerate, are, in express and positive terms, denied to the general Government; and the rights of private property have been guarded with equal care." See: Dred Scot v. Sanford, 13 How. 393; 15 L.Ed 691 (1857.)

[1] Congressional Record, 47th Cong., 1st Sess., XIII, 1217.

[2] Ibid., p. 1214. Original wording of the bill was "not all members shall be of one party."

however. He no doubt had the interest of his party at heart in urging the strengthening of the Democratic element on the Commission. Not only would this provide one additional job for a deserving Democrat, but it would double the representation of that party on a Commission which was to possess sweeping powers in relation to Utah politics. Two party appointees in such a strategic position could do much to preserve the Democratic majority in Utah. The acceptance of Brown's amendment by the Republicans, when they had an ample majority to defeat it, represented a strategic concession to practical politics. Under the amendment, they still maintained a safe majority control of the Commission, and at the same time they diminished the possible sources of criticism against their party by giving the Commission an appearance of semi-impartiality, thereby denying, by implication, the accusations of Senators Brown and Pendleton that the real aim of the Commission was to seize Utah for the Republicans. Furthermore, some of the Republicans were quite possibly looking to the future when a national Democratic victory would reverse the party proportions on the Commission. The soundest insurance against such a day was to make certain that under such circumstances the Republicans would retain at least a two-fifths representation.

Senator Brown's second amendment provided that the Utah Commission could not exclude any person from the polls,

nor refuse to count any vote, because of any opinion such voter may entertain on the subject of bigamy or polygamy. He apparently sensed the possibility that the Commission would attempt to disfranchise not only all polygamists but also those non-polygamist Mormons who, while not practicing polygamy, believed such practice to be right. To support his point he read from Webster's unabridged dictionary the definition of the word polygamist as "a person who practices polygamy, or maintains its lawfulness."[1] Senator Edmunds replied that Burrill's law dictionary gave the proper legal definition of a polygamist as being "he who has had two or more wives at the same time,"[2] and that such a definition was that intended by the Committee. Senator Brown, however, insisted that Webster was as good authority as Burrill and that in order to make the point entirely clear his amendment should be adopted. This was done by voice vote after Senator Edmunds had indicated that he had no objection to it "since it simply says what the present bill provides."[3] The limitations of this amendment had great influence on the work of the Commission. Had it not been included, it is certain that very heavy pressure would have been exercised upon the

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[1] Congressional Record, 47th Cong., 1st Sess., XIII, 1203.

[2] Ibid., p. 1203.

[3] Ibid., p. 1214.

Commission to disfranchise all Mormons in Utah under the theory of the Webster definition. This would have been especially likely following the adoption, in 1884, of the law in Idaho which denied the privilege of voting and holding public office to any member of the Mormon church.[1] The Commission might have justified similar action not only on Webster's definition, and the Idaho example, but also upon the provisions of section five of the Edmunds Act which prohibited all practicers and believers in polygamy from jury service. It could have been urged that since "believers" in polygamy were ineligible to perform the citizens duty of jury service, they certainly should not be permitted to exercise the highest privileges of citizenship--those of voting and holding office. Such eventualities were forestalled by Senator Brown's amendment.

The debate on the measure in the House of Representatives was even more brief than in the Senate. The House considered it, March 13, 1882, under a rule which permitted the bill to "be open for amendment and debate under the five minute rule for one hour," following which the previous question was adopted and each side was given one-half hour for presentation of arguments.[2] The majority successfully

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[1]Grenville H. Gibbs, "Idaho Becomes a State" (Unpublished Ph.D. dissertation, University of Utah, 1952) has an excellent discussion of the Idaho situation.

[2]Congressional Record, 47th Cong., 1st Sess., XIII, 1859.

defeated all amendments under its announced policy of passing the bill "as approved by the Senate."[1] The opponents of the measure, again mostly southern Democrats, attacked the bill with the same weapons as used in the Senate, but with even less success. After only two hours of debate, much of which was taken up in wrangling over parliamentary procedure, the measure was passed March 13 by a vote of 199 yeas to 42 nays, with 51 not voting.[2] President Arthur's signature, affixed March 22, 1882, made the bill a law.[3] Its provisions, and those of the Edmunds Tucker Bill which followed it in 1887, are analyzed in the next chapter.

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[1] Ibid., p. 1858.

[2] Ibid., p. 1877.

[3] Ibid., p. 2197.

CHAPTER II

THE LEGAL FRAMEWORK

Part I--The Edmunds Act

The Edmunds Act contained three major groups of provisions: (1) those covering the activities of the judiciary in Utah, (2) those dealing with the issuance of amnesty by the President in the event of the abandonment of polygamy, and (3) those covering the establishment of the Utah Commission, its powers, and functions. The act, therefore, formed a three pronged attack upon the institution of polygamy--first, through the courts; second, through the promise of amnesty; and third, through the activities of the Utah Commission.

Judicial provisions.--Judicial provisions of the Act were contained in sections one through five and gave to the courts of the Territory of Utah a new basis for judicial prosecution of those living in polygamy.

Section one. This section covered two major points: (1) a new definition of polygamy which included not only the definition found in the 1862 act of "every person who has a husband or wife living and undivorced who married another," but also "any man who hereafter simultaneously, or on the same day, marries more than one woman," and (2) a penalty of five hundred dollars fine and imprisonment for a term of not

more than five years for those found guilty of polygamy. The intent of the first provision was to strike at a practice alleged to have been followed in Utah wherein a man married two women simultaneously, thereby avoiding the violation of the letter of the law of 1862 which only operated against those already married who married another. The rather heavy penalty provided in item (2) was intended to discourage possible violators and to allow the courts a severe sentence for those found guilty.

These two provisions did little, however, to aid the judicial prosecution of the crime polygamy, for the same difficulty in prosecuting for that crime remained as it had been under the 1862 law--the problem of proving the polygamous marriage. Such marriages were not made a matter of legal record, and evidence to prove their performance was difficult to adduce.[1] This difficulty was such that even under the Edmunds law few prosecutions were made based upon the charge of polygamy. However, under the Edmunds law, in order to punish polygamists it was not necessary to charge them with polygamy, because section three of that Act provided a new and easier proved offense.

Section three. This segment contained the real judicial "teeth" of the law. It created a new crime identified

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[1] Salt Lake Tribune, January 26, 1882.

as "unlawful cohabitation," and defined that crime by stating that if "any male person in a territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor." The punishment of those found guilty of this offense was a "fine of not more than three hundred dollars, or imprisonment for not more than six months, or both at the discretion of the court." This section, therefore, gave to the courts and the law enforcement officers of Utah a new weapon to be used against those living in polygamy--the charge of unlawful cohabitation; and it was on the basis of this offense that most of the judicial assault moved. No longer was legal proof of marriage necessary as a basis for prosecution of polygamists. Now, evidence of a man's cohabitation with more than one woman was sufficient basis for prosecution, and such evidence was much easier to obtain than legal proof of polygamous marriage.

Section four. Provision was made therein that counts for any or all of the offenses named in the Act could be joined in the same information or indictment, thus simplifying court processes.

Section five. This section supplemented the provisions of the Poland Act with respect to the composition of juries in Utah; and, in effect, accomplished the exclusion of all faithful Mormons from jury service in trials involving

charges of bigamy, polygamy, or unlawful cohabitation. Such exclusion was achieved by providing that in any prosecution for bigamy, polygamy, or unlawful cohabitation "it shall be sufficient cause of challenge to any person drawn or summoned as a juryman or talesman first, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation . . . or second that he believes it right for a man to have more than one living and undivorced wife at the same time." Although only a small minority of Mormons were actually engaged in the practice of polygamy, the doctrine of plural marriage was an avowed doctrine of their church; and, therefore, all faithful members thereof would be included in those who believed polygamy "right," and could for that belief be challenged and excluded from jury service. This provision, which penalized a citizen because of his belief rather than his action, tread very heavily upon the freedom of religion as guaranteed in the first amendment to the Constitution. The details of the legal assault on polygamy are reserved for treatment in chapter ten.

Amnesty provisions.--The second prong of the salient against polygamy was contained in sections six and seven, and provided: (1) authorization for the President of the United States to grant amnesty to "such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation before the passage of the Act, on such conditions and under such

limitations as he should think proper," and (2) legitimated the issue of polygamous marriages born before the first day of January 1883. These two provisions were in effect a bribe to the Mormons to abandon polygamy, with the reward being presidential amnesty for their crimes and legitimacy for their polygamous children.

Utah Commission provisions.--The third prong of the attack was provided for in sections eight and nine of the law and constituted an assault upon the political front, with the intent of depriving those members of the Mormon church, who practiced polygamy, of their political rights and political influence.

Section eight. This section provided the political penalties of the law by barring any "polygamist, bigamist, or any person cohabiting with more than one woman, or any woman cohabiting with any of the . . . aforesaid," from voting at any election or holding any office or place of public trust, either with the government of the United States of within any territory over which the United States had full control. This provision gave statutory authority for the exclusion of all polygamists from public office and from the exercise of the right of franchise.

Section nine. To make certain that the administration of the provisions of section eight, above, was vigorous, and the effect thereof not dulled by the unsympathetic

administration of locally selected officials, section nine provided: (1) that "all registration and election offices of every description" in the Territory of Utah were immediately vacated, (2) that control over elections was removed from the residents of Utah, and (3) that there was created a five man Commission which was assigned the responsibility of filling the vacated election offices and of supervising Utah elections. The comprehensive power assigned the Utah Commission was provided by the following wording of the law:

> . . . Each and every duty relating to the registration of voters, the conduct of elections, the receiving or rejection of votes, and the canvassing and returning of the same and the issuing of certificates or other evidence of election in said Territory, shall, until other provisions be made by the legislative assembly of said Territory, as hereinafter by this section provided, be performed under the existing laws of the United States and said Territory by proper persons, who shall be appointed to execute such offices and perform such duties by a board of five persons to be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of one political party; and a majority of whom shall be a quorum. The members of said board so appointed by the President shall each receive a salary at the rate of three thousand dollars per annum, and shall continue in office until the legislative assembly of said Territory shall make provision for filling said offices as herein authorized. The secretary of the Territory shall be the secretary of said board, and keep a journal of its proceedings, and attest the action of said board under this section. . . .

The Congress, to form the basis of the political assault upon the institution of polygamy, had provided that all polygamists were to be deprived of their political rights. Then to clear the way for such deprivation, it had provided

that all election offices were vacated and the control over elections was transferred to a presidentially appointed five man commission, which was empowered both to appoint the election personnel and supervise the election process.

The Edmunds law had, therefore, established one passive and two active attacks upon polygamy. The passive phase was the continuing promise of amnesty upon the abandonment of polygamy. The first of the active phases was a comprehensive law enforcement and judicial program; and the second, extensive deprivation of political rights to polygamists, and the institution of a "foreign" commission to conduct the administration of all phases of Utah's elections. This twin column "active" attack against the "twin relic" was executed with a degree of cooperation, but under completely separate administrative organizations. Reference will be made to the relationship between the two, but the principal purpose of this study is to analyze the work of the Utah Commission which was in charge of the political salient. A more detailed analysis of its organization, powers, and functions follows.

Internal organization.--From the standpoint of composition of the Commission, the Edmunds Act provided that: (1) the Commission should be composed of five members, (2) members would be appointed by the President upon the approval of the Senate, and (3) the Commission would be bipartisan with no more than two members coming from one

political party. As to its operating procedure, the law provided that: (1) a majority of the Commission would constitute a quorum to do business, and (2) that the Secretary of the Territory of Utah would be ex-officio the secretary of the Commission, and would keep its journal and attest its actions. The salary of the Commission was set in the original law at $3,000 per annum; but due to the fact that President Arthur experienced difficulty recruiting qualified men for the Commission at the salary offered, the amount was increased, on the President's recommendation, to $5,000.[1]

Beyond these meagre terms, the law provided no restrictions upon, and gave no instructions to, the Commission as to its organization or methods of operation--it was left to its own discretion to devise both.

The law, therefore, was silent in several interesting areas: (1) no official name was given the Commission. Unofficially, however, it was quickly denoted "The Utah Commission," which title it used in all of its communications, (2) no provision was made for the selection of the chairman, (3) no qualifications for membership were specified--evidently that determination was left to the discretion of the President, (4) no specification was made as to the terms of office of the

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[1]The increase was provided in S. 1662, approved August 8, 1882. See: 22 Stat. 302.

members, other than to provide that the Commission should remain in operation until the legislature of Utah enacted an election and office holding law which would satisfactorily conform to the provisions of the Edmunds Act. Upon the passage of such law, the Utah Commission was to cease to exist, and the supervision of Utah elections was again to be the responsibility of the people of Utah. The law failed to specify the agency, commission, or individual empowered to decide when a bill passed by the legislature was satisfactory.[1] The fact that the prompt passage of such a law was anticipated, however, is indicated by the statements of the sponsor of the bill, Senator Edmunds, who told the Senate that the Commission provided for in his bill would serve for only a brief period, perhaps a year, and that it was to be entrusted with the "execution of the power of conducting one election."[2] The possibility that Senator Edmunds was only "talking" to secure passage of his bill, rather than expressing his considered judgment, must be recognized; but his words taken at face value prove him a poor prophet, for evidently no such

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[1]Utah's Territorial Governor, Eli B. Murray, assumed that the responsibility was his. He found all such laws passed by the legislature to be unsatisfactory, and therefore vetoed each, thereby assuring the continuation of the Utah Commission.

[2]Congressional Record, 47th Cong., 1st Sess., XIII, Part II, 1156.

satisfactory bill was ever passed during Utah's territorial period and the Commission served for fourteen years, supervising elections until Utah achieved statehood. Terms of office were controlled primarily by the shift in the political control of the office of President of the United States rather than by statutory provision.

External relationships.--Even more significant than the skeletal outline of the internal organization was the fact that the Commission was established as a totally independent agency. The Edmunds law made no reference to any relationship of supervision or responsibility between the Commission and any other governmental agency or person. Notable by their absence were any provisions relating to the supervisory role of the President or his power of removal of any of the members of the Commission. His power to remove may justifiably be assumed from his power to appoint; however, the same assumption seems less valid in relation to his power to supervise. Perhaps even an opposite conclusion is warranted. The fact that the Commission was created as a genuine bi-partisan body, with no more than three members from the majority party being admitted thereon, is certainly an implied limitation upon the presidential power of supervision. Evidently Congress intended that the Commission remain a somewhat impartial body not subject to presidential dictation. The fact that such intention existed is further substantiated by the

history of the Commission, which contains no instance of direct presidential interference with its operations.

Also completely absent from either the Congressional debates on the creation of the Commission or the provisions of the Edmunds Act are any references to the relationship of the Utah Commission to any other governmental agency, or any statements concerning the reporting or accounting responsibilities of the Commission. So far as statutory provisions were concerned, the Commission was left completely free from the legal necessity of reporting or accounting to any individual or body for either the expenditure of its funds or the performance of its functions. However, members of Congress and the Executive probably anticipated that the Commission would report to the Department of Interior, since that Department exercised general supervision over the territories; and apparently the members of the Commission received instructions to that effect, for within two weeks after they commenced operations they made an interim report to the Secretary of the Interior, dated August 31, 1882, and continued to make at least one such report per year to that official until after the admission of Utah as a state, January 6, 1896. The Commission's final report was dated June 30, 1896, some five months after Utah's statehood.[1] These reports, although

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[1]Durham inaccurately states that the Commission reported to the Secretary of the Interior from 1883-95. See: Durham, "Political Interpretation of Mormon History,"

addressed to the Secretary of Interior, were of the nature of documents submitted to Congress through the Secretary rather than to the Secretary himself. At no time did the Secretary make comment thereon indicating that he felt any responsibility for the statements of the Commission, its recommendations, or the performance of its functions. As the work of the Commission progressed, the nature of their reports indicates more and more that the members felt that they were in Utah not only to administer the Edmunds law, but also to recommend to Congress additional legislation deemed necessary to cope with the Utah situation. These recommendations the Commission made freely in each of its reports, with no apparent interference or comment from the Secretary of Interior. Nor did the Secretary of Interior attempt to exercise administrative supervision with respect to the activities of the Commission. He seemed to serve more as a medium of transmission of reports and requests and as a point of Washington contact rather than of law. Throughout its entire existence, the Commission maintained this same degree of independence.

Powers of the Commission.--The wording granting powers to the Utah Commission in section nine of the Edmunds

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Pacific Historical Review, XIII, No. 2, (June 1944), 144. The Commission submitted its first report to the Secretary of the Interior August 31, 1882. A second report dated November 17 was also submitted in 1882. See Messages and Documents, Interior Department, II, 1882-3, (Washington: Government Printing Office, 1882), 1003-9. Reference hereafter will be cited as Mess. and Docs., Int. Dept.

Act was broad indeed. "Every duty relating to the registration of voters, the conduct of election, the receiving or rejection of votes, the canvassing and returning of the same, and the issuing of certificates or other evidences of election" was assigned the Commission. This broad grant was modified by only three provisions contained in section nine.

The first such modification stated:

> The canvass and return of all the votes at elections in said Territory for members of the legislative assembly thereof shall be returned to said board, which shall canvass all such returns and issue certificates of election for those persons who, being eligible for such election, shall appear to have been lawfully elected, which certificates shall be the only evidence of the right of such persons to sit in such assembly.

The Commission was thus made the official canvassing board for elections to the Territorial legislature, and its certificates of election were not subject to challenge. Furthermore, this function could not be delegated. The fact that Congress dignified the canvass of the legislative election by making it the direct responsibility of the Commission indicates the importance attached to that election. This provision placed in the hands of the Commission a power which, if lent to fraudulent purposes, would give the Commission full control over the composition of the territorial legislature, and thereby give the Commission indirect control over its own existence; because so long as the legislature failed to enact a "satisfactory" election law, the Commission remained in existence and in

control of the complete electoral process in Utah.

The second restriction provided that the Commission "shall not exclude any person otherwise eligible to vote from the polls on account of any opinion such person may entertain on the subject of bigamy or polygamy, nor shall they refuse to count any such vote on account of the opinion of the person casting it. . . ." The Commission was thereby restricted from issuing regulations imposing deprivation of voting rights upon those "who believed polygamy right" but did not practice it. The fact that Congress in section five of the Edmunds Act had excluded such persons from sitting on juries, but in section nine of that same Act prohibited their exclusion from voting, provides an interesting division of political rights.

The third restriction required that the functions of the Commission should "be performed under the existing laws of the United States and said Territory." This provision, requiring the Commission to conform to both the laws of the Territory of Utah and those of the United States, practically established that body as a judicial agency, for it was obliged to decide not only as to which of the territorial election laws had been specifically superceded by congressional statute but also which of such laws became inoperative under the grant of power which gave the Commission "every duty" with respect to elections. The Commission, as might be anticipated, found

some difficulty in exercising this judicial power.

With only three minor restrictions, therefore, the Utah Commission was empowered to exercise full control over Utah elections. Such an assignment of power, while not so stating, established the Commission not only as a judicial agency possessing the power already noted, but also as an executive agency with power to appoint large numbers of personnel, to supervise election administration, and to issue election certificates. It also set up the Commission as a legislative body with power to "enact" rules for the conduct of the elections. The fact that the Commission operated as such an executive, legislative, judicial body is proven by its actions throughout its history. A more specific list of the powers of the Commission shows that it was authorized to: (1) issue regulations concerning procedure and eligibility for registration and voting, (2) appoint all registration and election officials, (3) determine location and number of polling stations, (4) frame rules for canvassing elections, (5) canvass the election for members of the Legislative Assembly, and (6) issue certificates of election for all offices, including certificates for those elected to the Assembly, which certificates were to be the sole evidence required to hold a seat in that body. All such functions to be performed with the goal of prohibiting polygamists from either voting or holding office, to the end that the abolition of polygamy

among the Mormons would be hastened.

After five years of administration of the Edmunds Act, during which time both the political and judicial attacks were pressed efficiently, polygamy still had not been abandoned, and there were few prospects of its abolition. Therefore, Congress supplemented the Edmunds law with another measure, the Edmunds-Tucker Act, which contained provisions providing new functions for the Utah Commission.

Part II--The Edmunds-Tucker Act

The Edmunds-Tucker Act contained provisions which implemented all phases of the attack on polygamy, and added a major new approach--the escheatment to the government of property owned by the Church of Jesus Christ of Latter-day Saints. The principal portion of the measure was concerned with the escheatment proceedings and strengthening the judicial crusade. So far as the functions of the Utah Commission were concerned, the law provided for: (1) the continuation of the Commission until such time as the territorial legislature passed the proper election and marriage laws, (2) the redistricting of the legislative districts of the Territory by a board composed of the Governor, Territorial Secretary, and the Utah Commission, (3) the disfranchisement of all women, and (4) the imposition of an oath as a prerequisite for registration, voting or holding any office--which oath demanded that the person concerned swear not only to his age, residence,

citizenship, name of legal wife, etc., but also to the fact that he would obey the terms of both the Edmunds and Edmunds-Tucker laws and that he would not "directly, or indirectly, aid or abet, counsel or advise, any other persons to commit" any of the crimes prohibited by the anti-polygamy laws.[1] Analysis of these new statutory responsibilities indicates that while considerable new authority was given the Commission, such authority did not substantially increase its administrative load.

The provision of the law, demanding that each prospective voter take an oath, merely provided statutory authority for a practice which had attained since 1882, the first year of the Commission's operations. It did, however, provide a set list of items which must be included in the oath, thereby giving added direction to the Commission. However, the Commission would have been saved much trouble if Congress had specifically worded the oath instead of merely listing the items which should be included therein. The mere listing of items to be covered left room for interpretation of the wording of the oath--a circumstance which led to disagreement between the Commission and certain members of the ultra anti-Mormon group, and caused the Commission some of its more difficult administrative problems.[2] The provision of the law

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[1] 24 Stat. 635.

[2] For a full discussion of this problem see chap. 4.

which disfranchised all women in Utah, while assigning a new power and function to the Commission, probably made that body's administrative problems lighter. The fact that no women could vote not only cut the total voting population by nearly half but also made determination as to who may vote much easier, reduced the number of appeals to the Commission, and in general should have made the work of the Commission lighter rather than heavier. The duty of reapportioning the Territory in conjunction with the Governor and the Secretary of the Territory was a task of but short duration. The Edmunds-Tucker Act, therefore, expanded the powers of the Commission; but such expansion probably resulted in a decrease in work load.

With respect to the powers and functions of law enforcement agencies and the courts, the law contained provisions which: (1) made the lawful husband or wife a competent witness in court, (2) made legal the attachment of witnesses without subpoena, (3) made adultery, incest, and fornication crimes in Utah--a provision which had not previously been included in Utah's law, (4) gave commissioners appointed by the Supreme Court and District Courts in Utah the same power as Justices of the Peace, (5) gave the marshal of Utah and his deputies the same powers in executing the laws of the United States or Utah Territory as possessed and exercised by sheriffs, constables and their deputies, (6) required that all marriages be made a matter of legal record attested to

by all parties and witnesses thereto, and made such document proof in the courts of such marriage and provided a fine of not more than $2,000 and imprisonment for not more than two years for those found guilty of violation of this provision, (7) disinherited illegitimate children, and (8) restricted the jurisdiction of Territorial Probate Courts to the handling of estates of deceased persons, and to the guardianship of the persons and property of infants and adults not of sound mind. The law then took a new approach to the problem of extirpation of polygamy by providing that: (1) "it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings, to forfeit and escheat to the United States" the property of corporations obtained or held in violation of the Morrill Act of 1862, which had restricted the value of property to be held by churches to $50,000., (2) the Church of Jesus Christ of Latter-day Saints was disincorporated, and (3) the Perpetual Emigration Fund[1] was dissolved and its property escheated to the United States. The effect of the administration of the last listed series of harsh provisions forms a vital chapter in Utah legal and religious history but are beyond the scope of this study.

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[1]The "Perpetual Emigration Fund" was maintained by the Mormon church to assist converts to emigrate to Utah.

CHAPTER III

BIOGRAPHY OF THE COMMISSION

Part I--The Appointment and Arrival of the Commission

Composition of the Commission.--Immediately following the passage of the Edmunds law, the attention of the Utah factions turned to the composition of the Commission. The Gentile element favored membership thereon of at least one, and preferably more, non-Mormon Utahns. Petitions were forwarded to the President on behalf of some of these, and organized action was taken to secure their appointment.[1] The Mormons, on the other hand, had concluded that any Utah appointments would be from the Gentile group, and, therefore, immediately favored the selection of the entire membership from outside Utah.[2] President Arthur apparently took a similar viewpoint; and dispatches from Washington, as early as April 5th, implied his intention to appoint only non-Utahns. He received applications from many parts of the nation,[3] and typical pressures were exerted upon him to secure the appointment of favorite candidates of various congressional

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[1] Ogden Herald, March 25, 1882.

[2] Deseret News, March 25, 1882.

[3] The Salt Lake Herald, of April 4, 1882, listed the names of over seventy applicants for positions on the Commission.

delegations.[1] Ex-Senator Paddock, an intimate friend of President Arthur, was the first member selected; but he refused to give a definite acceptance until assured that Congress would increase the salary for the position and provide funds for the operation of the Commission.[2] The President apparently experienced similar difficulty with other prospects, for very shortly he recommended to Congress that the salary be raised to $5,000 and that an appropriation be made to defray the Commission's expenses.[3] On April 10th, the Senate gave speedy approval to the increase, but the House did not give its consent until the second week in August.[4] Evidently, however, the Senate passage of the measure was sufficient guarantee for other members of the Commission to accept; and President Arthur was able on June 15 to announce the membership of the board, whose profession, residence, party, and experience are shown in the following table.[5]

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[1] Salt Lake Tribune, April 24, 1882.

[2] Ibid., May 5, 1882.

[3] Congressional Record, XIII, Part III, 2725.

[4] Ibid., Part VII, p. 7008.

[5] Salt Lake Tribune, June 17, 1882.

TABLE 1

MEMBERSHIP AND BACKGROUND
OF THE UTAH COMMISSION *

Name	Profession	Residence	Party	Experience
Alexander Ramsey Chairman	Lawyer	Minnesota	Rep.	Territorial Governor of Minn. Senator from Minn. Secretary of War under Pres. Hayes
A. B. Paddock ...	Lawyer	Nebraska	Rep.	Territorial Governor of Neb. Senator from Neb.
J. F. Godfrey ...	Lawyer	Iowa	Rep.	Colonel in northern army during Civil War District Attorney several terms Other public offices
A. B. Carlton ...	Lawyer	Indiana	Dem.	Member for several terms of Indiana Legislature Circuit judge Professor of law Well reputed as writer and speaker
J. R. Pettigrew	Lawyer	Arkansas	Dem.	Member of Legislature of Ark. At time of appointment, Journal Clerk of U. S. Senate

*Source: Compiled from information published in Salt Lake Tribune, June 17, 1882.

The announcement of the membership of the Commission was a source of bitter disappointment to the Gentiles. Not that the calibre of the Commissioners was low, but the failure to nominate a Gentile Utahn was considered a "slight and a reproach to Utah . . . and proof that in the narrow estimation of the east, there is here both a low order of intellect and of integrity."[1]

To cover the Commission's first year of operations, Congress provided the following appropriation:

> For salaries of the Commissioners at five thousand dollars each, twenty-five thousand dollars.
> For compensation of the officers of election, including contingent expenses, twenty-five thousand dollars.
> For expenses of the Commission, for printing, stationery, clerical hire and rent, fifteen thousand dollars.[2]

It is interesting to note that in the original debates on the Edmunds bill the majority had insisted that no item of appropriation would be involved, since the expenses of the Commission would be met from the territorial legislature. The reluctance of persons to accept assignment to the Commission under such circumstances forced a reconsideration in Congress. Such reluctance can be readily understood, for had Congress made the Commissioners dependent upon the

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[1] Ibid.

[2] 22 Stat. 313 (1882).

hostile Utah legislature for appropriations for both salary and operating expenses, it is likely that such appropriations would have been negligible or non-existent and would have placed the Commission in an untenable administrative situation--a condition which would have been reminiscent of that experienced by some of the royal governors of our early colonies.

The arrival.--The fact that Utah law required that an election be held the first Monday in August of 1882 for territorial and local officials did not seem to stimulate the Commission to any vigorous effort to arrive in Utah in time to supervise that election. The Commission did not hold its first meeting until the members assembled in Chicago on July 17th, over a month after their appointment had been announced.[1] Even then, no specific action was taken because legislation providing for the expenses of the Commission, including the increased salaries, had not been passed.[2] However, tentative arrangements were made for the Commission to meet in Omaha on August 15 for the trip westward. Inasmuch as the provisions for salary and expenses had been made at that time, the Commission met and departed as prearranged.

The delayed departure of the Commission, and its

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[1] Deseret News, July 15, 1882.

[2] Ibid.

consequent failure to supervise the August election, created in Utah a peculiar political situation which was to be a source of immediate conflict in that Territory and of trouble to the Commission. The election, of course, was not held, because under the provisions of the Edmunds law all election offices were vacant and no registration or supervision of the election could take place without the presence of the Utah Commission. The situation evolved into an interesting and continuing political struggle, whose facets are covered in chapter six.

The Commission arrived in Salt Lake City, August 18, 1882, where the people had long been anticipating its appearance. Each faction had its hopes and fears. For some time the Salt Lake Tribune had been carrying on a campaign of villification of the Mormons because it was alleged that they would exercise disloyal opposition toward the operation of the Edmunds law.[1] That the Mormons were prepared to fight for their political rights was obvious. Many of the leading polygamous Mormons had already ceased to live with more than one wife in an attempt to abide by the terms of the Edmunds law, which prohibited cohabitation with more than one woman.[2] Statements had also been made to the effect that the

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[1] Salt Lake Tribune, July 28, 1882, contains a typical attack.

[2] Deseret News, July 19, 1882.

constitutionality of the Edmunds law would be tested at an early moment. Plans to greet and influence the Commission had also been made. Evidently, both factions found that the best strategy would be to have the initial contact pleasant and friendly and so appointed leading members to go to Ogden to greet the Commission. The representatives of the two groups even joined forces for the journey, traveling from Salt Lake to Ogden in a special railroad car provided for the occasion.[1] There they met the Commissioners and returned with them to Salt Lake City.

The emotions of the members of the Commission as they entered upon their new duties were no doubt mixed, for they had been warned before their arrival of the difficulty of their assignment. The lurid tales which had been circulated about the Mormons led some even to expect forceful

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[1] The Salt Lake Tribune, August 19, 1882, described the event as follows:

"At last the long expected Commissioners for Utah, appointed under the Edmunds bill, have arrived in this city, to assume their duties under that act. It being known that they were on the road and would arrive by last evening's train, a party of gentlemen went to Ogden to greet and escort them to Zion. The Utah Central Company placed a special car on the regular train which left here at 3:40 p.m., and among those who went to Ogden to receive the Commissioners were Governor Murray, Secretary Thomas, General Bane, General Solomon, Messrs. Van Zile, W. H. Hooper, John Sharp, Dusenbury, Parley Williams, Mayor Jennings, ex-Mayor Little, Auditor Clayton, Treasurer Jack E. Sells, F. S. Richards, John T. Caine, G. M. Scott, Hosea Stout, Robert Walker and Mr. Billings."

opposition to the exercise of their delegated powers.[1] But instead they were invited to a reception in their honor at which a large crowd of approximately one thousand persons, composed of both Mormon and Gentiles, met and appraised the members of the Commission.[2] The Commissioners also appraised the crowd and were a little surprised at the amicable atmosphere, but suspected that it was only the "torrent's

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[1] A. B. Carlton, The Wonderlands of the Wild West (No publisher listed, 1891), p. 53.

Commissioner Carlton described his reactions:

"When I first learned that I was to go on an official mission to Mormon-land I knew but little about the people of that Territory. I had heard of the 'Mormon War,' the 'Mountain Meadows Massacre,' the 'Danites' and the 'Avenging Angels,' and I had read some pages in sensational books like the 'Crimes and Mysteries of Mormonism.' I had read some accounts more favorable to the 'Saints,' but on the whole I had the same ill opinion of them that is generally entertained by the 'Gentiles.'

"On our arrival at Salt Lake City, carriages were in waiting to convey us to the Continental Hotel. After supper, having been shown to my room and being ready to retire, I carefully examined the door and window fastenings, from a half-defined apprehension that some Mormon 'Danite' might make me a victim of blood atonement as an official persecutor of the Saints. But my sleep was sweet, sound and secure; and after that night I was not long in discovering that one was as safe in Salt Lake City, by day or by night, as in any other city in the United States."

[2] The Salt Lake Herald, August 23, 1882, observed:

"In every way the visitors seemed to be pleased with the Commissioners. No objection was found either to their weight--speaking in an avoirdupois sense--to their complexion, to their looks, to their reputation, nor to their intellectual appearance. If the gentlemen cared at all, they have reasons to feel complimented at the ease with which they have captured the good will of so many persons--particularly of persons who according to popular repute, are liable to be extremely critical over even the minutest details of men holding the positions of the gentlemen comprising the Utah Commission."

smoothness ere it dash below."[1]

The "honeymoon" as expected was a short one. Immediately the news organs of the divided factions commenced a concentrated course of instruction telling the Commissioners why they were in Utah and what functions and powers they were to exercise. The Tribune started the "course" in a long article addressed "to those not familiar" with Utah problems, which explained why the people of Utah could not get along among themselves without national aid, and why the Commission had been appointed. The article was a repeat of anti-Mormon charges, including the "bestial" practice of polygamy; the Mormon resistance to the laws; the "perverted civil administration," which was described as an "ecclesiastical despotism in the disguise of republican form;" the totally inefficient local government which was charged with being an essentially "treasonable organization devoting all its power to thwarting the operation of national law;" the Mormon dominance of the school system; the "profligate methods prevailing in the public administration; and lastly, the solidarity of the Mormons both as a church and a political party. The article concluded with the plain implication that the Commission possessed the power to remedy all of these evils. This idea of the extensive power of the Commission was

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[1]Carlton, op. cit., p. 50.

reiterated frequently by the Tribune, which insisted that the Commission possessed the broadest sort of implied powers and must do "more than just clerical work"--it must carry out the intent of the Edmunds Act, which was the "obliteration of polygamy."[1] The Deseret News and other Mormon papers took an opposite position and argued insistently that the Commission was here only "to enforce the law," and that any actions which it took must have a specific basis either in federal or territorial law.[2] The intensity of the argument as to the extent of the power of the Commission gave fair warning that the actions and decisions of that body would be subject to the closest scrutiny and the broadest comment of the opposing Utah factions. Throughout its history, the Commission labored, as Commissioner Carlton described it, "between the devil and the deep blue sea" of these two elements--seldom pleasing both at the same time, occasionally gaining the approval of one or the other, and frequently incurring the displeasure of both simultaneously.

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[1] Salt Lake Tribune, August 20, 1882.

[2] Deseret News, August 21, 1882.

Part II--The Administration of the Commission

The actual work of the Commission falls into four chronological periods: 1882-87, 1887-90, 1890-93, and 1893-96. Each will receive brief historical review to provide background for later analytical material.

1882-87.--The first year of the Commission's operations, 1882, was highlighted by the development of the basic operating procedures of the Commission, the issuance of fundamental regulations covering registration and election, the interpretation of its powers, and the solution to typical and recurring problems. The first problem it faced was to decide whether or not to hold an election for delegate to Congress which was scheduled for November. The question was charged with more than the usual amount of emotion, due to the fact that Utah was at that time unrepresented in Congress as a result of the refusal by the House of Representatives to seat a Utah delegate following the disputed election of 1880 and the famed Cannon-Campbell election case.[1] The Salt Lake Tribune, representing the Gentile viewpoint, argued against holding such an election; and the Deseret News, representing the Mormons, in favor. The Gentile argument centered around three points: (1) that such an

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[1]For a good description of this struggle see: Whitney, op. cit., III, 130-66.

election was not needed, (2) that if held it would be of doubtful legality, and (3) the holding of same presented insuperable difficulties because a completely new registration would be necessary, which could not possibly be accomplished prior to the date of the election, and anyway Utah law did not authorize such a registration in 1882. The Tribune then politely, but firmly, intimated that since the delegate election was the only possible business which could come before the Commission in 1882, and since that election could not be held, there was nothing for the Commission to do--the members should just look around, see the scenery, get acquainted with the people, and then return home.[1] Evidently the Gentiles prefered that Utah have no representation in Congress rather than representation by a Mormon delegate. The Mormons, on the other hand, were most anxious to regain representation; therefore, they argued that the only possible difficulties in the way of holding the delegate election were those that "might be manufactured by obstructionists."[2] They insisted that there was no need for a completely new registration but that a revision of the voting lists, as provided for by Utah law, could be carried out as scheduled; and that all ineligible to vote, under the Edmunds law, could be stricken from such lists, and the

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[1] Salt Lake Tribune, September 19, 1882.

[2] Deseret News, September 18-20, 1882.

election could be held with complete legality. The Commission evidently found the Mormon arguments more compelling, and on August 21 announced that the election would be held.[1] The Tribune immediately attacked the Commission for having made a "gross, and if persisted in, irreparable blunder."[2] The Deseret News, however, found the decision "straightforward and sensible" and that it demonstrated that the gentlemen of the Commission were "disposed to carry out the law and not the private views of meddlesome persons."[3]

This first decision was significant, for it demonstrated that the Commission was approaching its task with at least a degree of impartiality and was not to be totally guided by the opinions of the non-Mormons.[4] Furthermore, it

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[1] U. C. Minutes, A, 15-23.

[2] Salt Lake Tribune, August 22, 1882.

[3] Deseret News, August 22, 1882.

[4] Commissioner Carlton recalled this opening battle of the Commission's life as follows:

"Very soon after our arrival in Salt Lake City we were kindly invited by the leading Gentile paper 'to take a walk,' in other words it was politely intimated that we might look around a few days and go back to where we came from. We were told that we couldn't hold an election under the law; and afterwards long dissertations followed, showing to the Mormons, the Commissioners, and all other anxious enquirers, that there were insuperable difficulties in the way of the Commission doing anything. But we had read the memorable anti-climax:

'The King of France, with forty thousand men,
Marched up the hill and then marched down again.'

"But we did not care to follow the illustrious example of the valorous grand monarch. We thought that we could

illustrates a point which was repeatedly demonstrated during the life of the Commission--that the "clients" of an administrative agency are loyal to that agency in direct ratio to the favorableness of the decisions to their cause. The two factions of clients served by the Utah Commission, the Gentiles and the Mormons, freely alternated their weak praise and heavy censure, depending on the effect of the Commission's current decision on the faction concerned.

Having made the decision to proceed with the election, the Commission was faced with twin duties: (1) to make rules as to eligible voters, registration, and election procedures, and (2) to appoint registration officers and election judges. On August 22, the Commission appointed a committee of three, composed of Commissioners Godfrey, Pettigrew, and Carlton, "to prepare Rules, Regulations, and Instructions, governing appointment and duties of the Registration Officers and the conduct of elections."[1] On August 24, the Commission adopted its first set of election rules.[2] Several of the provisions were subject to comment, but one especially engendered vigorous reaction. That provision demanded that every prospective voter must, prior to being registered, subscribe an

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legally hold the election; and we did." See: Carlton, op. cit., p. 50.

[1] U. C. Minutes, A, 19.

[2] Details of the election rules are covered in chap. 5.

oath which contained a phrase excluding all persons who cohabited with more than one woman "in the marriage relation," but said nothing of those who cohabited outside the marriage relation. The Commission, by adopting this wording for the oath, had determined that the intent of the Edmunds law was that only Mormons who lived in the polygamous relationship of marriage were to be excluded from the franchise. This interpretation was vigorously criticized by the Mormon press as legislative action grossly in excess of the Commission's power, and as absolute proof that the Edmunds law was not aimed at the sexual "sins" of polygamy, otherwise the Commission would have prohibited from the polls all persons who cohabited with more than one woman whether in or out of the marriage relation.[1] The Mormon point, that the Commission's action was legislative in nature and beyond their powers, was well taken, for nowhere in the terms of the Edmunds law was such a provision discernible. The Commission had, by this action, established itself as a legislative agency, and had served notice that it would legislate additions to the law where thought desirable in the achievement of its mission. Within a few days, it proceeded to exercise judicial power and assumed the right to interpret the meaning of the Edmunds law. This it did in response to an inquiry from one of its

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[1] Deseret News, August 25, 1882.

registration agents as to the elegibility to vote of persons who at one time lived in polygamy but were not now living in that state. After due consideration it determined that no persons who had ever lived in polygamy since 1862 could vote or hold office.[1] By this judicial ruling of "once a polygamist, always a polygamist" the Commission had taken an ex post facto view of the provisions of the Edmunds law and had judicially determined the meaning of that law to exclude any person who had entered a polygamous relation since 1862, in spite of the fact that the person involved may have been living monogamously, or even as a widow or widower, for many years. The legality of the Commission's determinations of those eligible to vote was shortly challenged in the court by the Mormons, and overthrown in 1885 by a decision of the U. S. Supreme Court.[2]

The exercise of the executive functions of the Commission, the appointment of registration and election personnel, was a major problem during 1882 inasmuch as the Commission had to select personnel which would be favorable to the provisions of the Edmunds law. This led it to choose non-Mormons wherever possible.[3] Lacking acquaintance in the Territory, the Commissioners were forced to rely upon the recommendations of local Gentile citizens.[4]

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[1] U. C. Minutes, A, 32. [2] Murphy v. Ramsey, 114 U.S.15.

[3] U. C. Minutes, A. 117. [4] Ibid., p. 34.

The preparations for the November 7 election were carried on zealously by both parties. The Liberals nominated Mr. Philip T. Van Zile and the People's Party selected Mr. John T. Caine to be their standard bearer. They also nominated him to fill the unexpired term in the Forty-seventh Congress. Each party adopted an extensive platform at their territorial convention and canvassed the entire area thoroughly.[1] The Liberals demonstrated much more aggressiveness than they had done for years, probably hoping that the rules of the Commission, which resulted in the disfranchisement of approximately 12,000 voters, most of whom would have voted the People's Party ticket, would give them an opportunity to at least make a good showing. The People's Party meanwhile worked vigorously to retain its dominance.[2]

Following the nomination of Mr. Caine for the vacancy existing in the seat of delegate to the Forty-seventh Congress, the People's Party asked the Commission's cooperation in instructing the election judges to count the votes cast for Mr. Caine. This the Commission refused to do, but did agree that if members of the People's Party should vote for Mr. Caine for the unexpired term, that such surplusage on the ballot would not spoil the ballots concerned.[3]

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[1] Whitney, op. cit., III, 238-245.

[2] Ibid., p. 243.

[3] U. C. Minutes, A, 99.

The outcome of the election, as certified by a canvassing board appointed by the Commission, showed Mr. Caine the victor with a total of 23,039 as compared to Mr. Van Zile with 4,884.[1] Prior to the start of the canvas, Mr. Van Zile protested the counting of the votes cast for Mr. Caine on the ground that Mr. Caine, being a Mormon, was within the meaning of the Edmunds law a polygamist. This protest the Canvassing Board overruled unanimously. Immediately Mr. Van Zile raised a second point which maintained that neither the Canvassing Board nor the Utah Commission had any authority to issue certificates of election--that under Utah law, only the Governor and Secretary of the Territory had such power. Finding no validity in this argument, the Board finished its work and issued a certificate of election to Mr. Caine. The votes cast for Mr. Caine for the unexpired term were also totalled and a copy thereof given him. With this rather unusual "election certificate" Mr. Caine was seated and served in the 47th Congress.[2]

Following the completion of the election, the Commission proceeded to prepare its first annual report to Congress, which was filed on November 13.

Commissioner's report.--That document established the pattern for all future reports of the Commission.[3] It

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[1] Ibid., p. 99. [2] Whitney, op. cit., III, 247.

[3] U. C. Minutes, A, 106.

reviewed in brief the work of the Commission, including the problems faced and decisions taken, and advised the Secretary that it had been successful in excluding polygamists from the polls and from office. The report then proceeded to recount action which the Commission thought Congress should take in relation to the Utah problem. Two items seemed of greatest importance: the passage of a marriage law, which would require that "all marriages be solemnized in certain designated public places"; and the repeal of the Utah woman suffrage statute. The report observed that the Commission had not anticipated that it could achieve the desired suppression of polygamy in a few months and that the members thought that Congress felt the same way, but added that there was reason to believe that the continued enforcement of the Edmund's law, combined with other factors, was setting strongly in the direction of reform. It opposed the enactment of measures "destructive of local self government," but added that if the next session of the Utah Legislative Assembly" shall fail to respond to the will of the nation, Congress should have no hesitation in using extraordinary measures to compel the people of this Territory to obey the laws." The Commission defeated a proposed report by Commissioner Paddock, which contained extensive and harsh recommendations.[1]

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[1]Commissioner Paddock failed in an attempt to have the Commission adopt a much more vigorous report, which

Following the completion of additional work relative to municipal elections, the Commission adjourned, November 17, to meet in Washington, D. C. on December 15, where it drafted two bills to be presented to Congress to achieve the aims of its report--i.e., H. R. 7102, to require all marriages to be public, and H. R. 7127 to repeal the Woman Suffrage statute of Utah. Until February 13, 1883, the Commission continued to meet periodically, in Washington, to discuss the recommended legislation. It adjourned to meet again in Salt Lake City on the 15th day of April 1883.[1] As it concluded its

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would have recommended to Congress that the Organic Act be amended to provide the following:

1. Abolishing the Legislative Assembly.
2. Abolishing the elective system.
3. Abolishing the office of territorial delegate.
4. Providing that all territorial, county and precinct officers, shall be appointed by the Governor, and confirmed by a Commission appointed by the President, the same to be subject to revision and rejection by the President.
5. Giving to the Commission, together with the Governor, authority to act as a Board of Equalization, with power to revise and equalize taxation.
6. Giving to the Commission and the Governor, authority to act as a Board of Immigration, with full power to make rules and regulations concerning the same.
7. Placing the Commission and the Governor in charge of public improvements, as a Board of Public Works, with authority over the system of irrigation in the Territory, so far as practicable considering private rights.

See: Ibid., Vol. A, 117-28.

[1]Ibid., A, 155.

first year's activity, the Gentile press found the Commission a great disappointment,[1] while the Mormon press was mildly complimentary.[2]

A summary of the first year's work of the Utah Commission reveals three major points: (1) it had developed into a full scale regulatory agency exercising executive, legislative, and judicial functions and had used freely the implied powers theory to justify its actions. But even such broad interpretations of its power had not been satisfactory to the Gentile-Liberal group which sought more drastic anti-Mormon action, (2) the Commission had established patterns of operation which were followed in subsequent years, and had faced samples of practically every basic problem it was to meet during its existence, and (3) the Commission had started a practice which develops into its most effective function, the practice of recommending to Congress action to be taken with respect to the Utah problem.

Since patterns of operation and types of problems remained fairly constant during the Commission administration, details of other periods are not necessary here. However, a short review of the basic trends existing in the periods of the Commission's operation will provide additional background for appreciation of subsequent analytical chapters.

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[1] Salt Lake Tribune, Dec. 8, 1882.

[2] Salt Lake Herald, Nov. 19, 1882.

1883-86.--This period was highlighted by the fact that the Commission became an almost accepted part of the Utah political scene. Its arrivals and departures attracted little attention, and its activities assumed the role of a bit player in the drama of Utah politics rather than that of a leading character. The Commission continued the efficient administration of its functions to the almost complete exclusion of polygamists from either voting or holding office. But although the Commission accomplished such exclusion, it found little evidence to show that either the preaching or practice of polygamy was on the decrease. This led to an increasing conviction on the part of the majority of the members of the Commission that the administration of the political provisions of the Edmunds law would not effect the desired reforms in Utah. This conviction led the Commission to consume major portions of its reports in recommending more severe action against Utah polygamists. These suggestions ranged from implying that a more active judicial crusade should be undertaken to the recommendations of the total abolition of local self-government in the Territory.[1] The effect of these recommendations on Congress, and the subsequent passage of the Edmunds-Tucker law, is difficult to assess; but no doubt they played a significant role in bringing Congress to the adoption of that harsh measure.

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[1]For a list of recommendations made by the Commission see chap. 8.

1887-1890.--This period was ushered in by the passage of the Edmunds-Tucker law and the assignment thereby of new duties to the Commission, and was characterized on the administrative front by extensive difficulty being experienced by the Commission in the administration of the oath provisions of the Edmunds-Tucker law. The difficulties climaxed in the removal of two of the registration agents for failure to follow the Commission's suggestions.[1] This period also saw the development of increasing signs that polygamy was to be abandoned. Two events were significant in this connection. First, was the passage in 1887, by the dominantly Mormon Territorial Legislature, of a comprehensive marriage law--the first such in the Territory. That statute prohibited polygamous or bigamous marriages, limited the persons who could perform marriages, and provided that no marriage could be solemnized without a license therefor.[2] The second event was the meeting of a Territorial Constitutional Convention, called by the People's Party, which adopted a constitution containing a provision prohibiting polygamy.[3] These two events were given different interpretations by members of the Commission with the result that there developed within the Commission two opposing factions: the majority, favoring the recommendations of penalties even more severe than those of the

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[1]For details see chap. 4.

[2]Compiled Laws of Utah, Vol. II (1888), chap. v.

[3]Whitney, op. cit., III, 584.

Edmunds-Tucker law, and Commissioners Carlton and McClernand; a minority, convinced that existing legislation was adequate, that polygamy was fast coming to an end, and that any further punitive legislative enactments would amount to no more than persecution.[1] This schism resulted in the submission by the Commission of majority and minority reports in 1887, 1888, 1889, and 1891, with one of the members, Commissioner McClernand, refusing to sign the 1890 and 1892 reports, but failing to submit a minority statement. The differing points of view of the Commissioners carried over to the administrative phases of the work as well as in the general area of the status of polygamy.

1890-93.--This epoch of the Commission administration is inaugurated by the issuance, October 6, 1890, by President Wilford Woodruff of the Church of Jesus Christ of Latter-day Saints, of the so called "manifesto," a document which renounced polygamy as a practice of the Mormon church and advised those members thereof to refrain from contracting any marriage forbidden by the law of the land.[2] Subsequent events have proven that the "manifesto" marked the end of the struggle of the Mormon church to retain its practice of polygamy;

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[1] See minority reports of 1888 and 1889.

[2] For a full discussion of this event see chap. 9. The manifesto was issued in 1890, immediately following the submission of the Commission's report for that year.

but at the time of its issuance, the majority of the Commission was hesitant to accept the pronouncement, evidently doubting that it was sufficient proof of the church's total renunciation of polygamy. In the 1891 report, they therefore advised a waiting attitude on the part of the government. Commissioner McClernand, again forming a minority, found that the action had been sincerely taken and that "the Territory has at length arrived at a point promising permanent deliverance from the toils of bigotry and factions" and submitted a minority report.[1] His convictions were greatly strengthened by the fact that early in 1891 the Mormon electors composing the People's Party declined to make nominations for public offices and, disbanding that party, united according to their inclinations with the Democrats or Republicans. This significant political event, which marked the abandonment of the old party structure of the People's or Mormon Party, contesting against the Liberal or non-Mormon Party was to Mr. McClernand indication of the advancement which had been made in Utah and proof that no further impositions should be placed upon the people of that Territory. The majority of the Commission remained dubious, however, as to the thoroughness of either the political or religious reforms taking place in Utah. In their 1892 report they noted the progress being

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[1] Mess. and Docs., Int. Dept., III (1891-2), 448.

made; but in regard to the abandonment of the old political parties and the affiliation of Utahns with the national parties, they advised Congress that they did not believe that the end was reached but rather that a beginning had been made which augured well for the future.[1] With regard to the abandonment of polygamy, the majority of the Commission was still reticent to accept such to be an accomplished fact. It found instances throughout the territory of alleged marriage into polygamy and a widespread continuation of unlawful cohabitation in the polygamous relationship. It was especially emphatic in pointing out that the Church still claimed polygamy as a true doctrine and had only abandoned its practice. However, in spite of these items, the Commission called attention to the fact that on December 19, 1891 the members of the First Presidency of the Church and the Quorum of the Twelve had petitioned the President of the United States for amnesty for their "patient and suffering" people, and had assured the President that the covenants made with the adoption of the "manifesto" had been kept. Further, they pledged to him their "faith and honor" for future obedience to the laws. This petition the Commission felt to be "the most important of the documents the Church has issued;" and without assenting to all the assertions therein contained, the Commission

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[1] Ibid., (1892-3), p. 445.

stated that it would "be glad if the relief prayed for could be granted. . . ." It was not, however, ready to give full endorsement to the movement for statehood, which for some time had again been very active, because it wanted time to put the people upon their honor, giving them an opportunity to prove that the reliance of the Government upon their pledge of faith and honor is not misplaced.[1] The approval of the Commission for grant of amnesty had significant influence upon President Harrison's Amnesty proclamation, on January 4, 1893, for that proclamation stated as one of the reasons for its issuance that the Commission had so recommended.[2]

1893-96.--This period brings to a close the career of the Commission; but before it finished its work it was to participate in a series of significant events. Probably most important from the standpoint of administration was the passage by Congress, March 3, 1893, of a requirement that all members of the Commission from that date forward must be residents of Utah.[3] Mr. H. C. Lett, appointed June 6, 1893, was the first Utahn to attain membership on the Commission. However, his career was cut short by death on March 27, 1894. By April 1894, all non-Utahn members had resigned, and the

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[1] Mess. and Docs., Int. Dept., III (1892-3), 466.

[2] Messages and Papers of the Presidents (Bureau of National Literature, 1897), XIII, 5803.

[3] 27 U.S. Stat. 206.

President had appointed and the Senate approved Jerrold R. Letcher, Erasmus W. Tatlock, Albert G. Norell, Hoyt Sherman, Jr. and George W. Thatcher, all of Utah, for membership on the Commission.[1] This transfer of control of the Commission to Utah was but an outgrowth of other events. January 4, 1893, President Benjamin Harrison had issued his Proclamation of Amnesty, which granted "a full amnesty and pardon to all persons liable to the penalties" of the Edmunds-Tucker Act and who have "since November 1, 1890 abstained from . . . unlawful cohabitation."[2] This was followed very shortly by a similar proclamation dated September 25, 1894, issued by President Grover Cleveland, which granted "a full amnesty and pardon to all persons" who had been deprived of civil rights or convicted of violations of the acts of Congress against polygamy, bigamy, and unlawful cohabitation.[3] The issuance of these proclamations which lifted the political penalties of the Edmunds and Edmunds-Tucker Acts, plus the action of Congress making the Commission a Utah institution, in part returned the control of the electoral process to Utah. Thus, the existence of the Commission for the next three years was merely a matter of expediency. Two major reasons combined

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[1] Mess. and Docs., Int. Dept., III (1895), 643.

[2] Messages and Papers of the Presidents (Bureau of National Literature, 1897), XIII, 5803-4.

[3] Ibid., pp. 5942-3.

for its continuance: (1) the expenses of elections were being paid by the federal government, which item of saving was interesting to the people of the Territory,[1] and (2) the approaching achievement of statehood, with its new constitutional and statutory provisions governing elections, made a change seem unnecessary.

The long struggle for Utah statehood was successfully concluded when, July 16, 1894, Congress approved the Utah Enabling Act which had been introduced September 6, 1893 by Utah's delegate Joseph R. Rawlins.[2] The Convention, to draft a constitution for Utah, concluded its labors May 8, 1895, with the proposed constitution being approved November 5, 1895 by a vote of 31,305 to 7,607.[3]

The administration of the regular elections under the terms of the amnesty provisions, and the elections leading to the Constitutional Convention when political parties were vigorously struggling for the control of that convention, was one of the most difficult administrative periods of the entire Commission's career.[4] However, the process was successfully

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[1]As early as January 12, 1888, the Salt Lake Herald contained an editorial opposing abolition of the Commission on the ground that the federal government paid for the administration of elections in "about the same way they would be administered if under local control."

[2]28 U.S. Stat. 107.

[3]Utah Code Annotated, I (1943), 193.

[4]See chap. 5 for details.

completed, and President Grover Cleveland issued his proclamation admitting Utah as a state January 4, 1896.[1] That act sounded the official death knell of the Commission. It continued functioning to finish up its work until the submission of its final report June 30, 1896.[2]

Detailed analysis of the activities of the Commission in the various areas of its operations, and the effect thereof, are found in subsequent chapters.

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[1] Utah Code Annotated, I (1943), 66.

[2] Mess. and Doc., Int. Dept. III (1896), 447.

CHAPTER IV

THE UTAH COMMISSION AND REGISTRATION

Part I--Utah Election Laws

In order to appreciate the change in Utah politics wrought by the Utah Commission's operations, it is essential that an understanding be had of the laws in force at the time it assumed control of the Utah electoral system. Those laws gave full control of the electoral process to the dominant Mormon majority by providing supervision of elections at the county and municipal level. The law, passed in 1878, permitted all male taxpaying citizens over the age of twenty-one years who had resided in the territory six months and the precinct one month, and all women who were over twenty-one and met the residence requirements and were a citizen or the wife, widow or daughter of a citizen, to register and vote.[1] The law demanded that each registrant subscribe the following oath:

> I,_____being first duly sworn, depose and say that I am over twenty-one years of age and have resided in the Territory of Utah for six months, and in the precinct of _____one month next preceding the date hereof, and (if a male) am a ('native born,' or 'naturalized,' as the case may be) citizen of the United States, and a taxpayer in this Territory; (or, if a female,) I am 'native born' or 'naturalized,' or the 'wife,' 'widow,' or 'daughter,' (as the case

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[1] Compiled Laws of Utah, I (1888), 318. Women had been franchised in Utah since February 12, 1870. See Compiled Laws of Utah (1876), p. 88.

may be) of native born or naturalized citizen of the United States.

No territory wide supervision of elections was provided. However, in the instances of territorial offices and those covering more than one county, the vote was canvassed by the Territorial Secretary and certificates of election thereto were issued by the Governor. All other functions were performed at the county, precinct, or municipal level.[1] The county assessor served ex-officio as county registrar and appointed the resident precinct deputy registrars. These officials were required to revise the registration lists "at the time of making the annual assessment for taxes in each year" by a visit to every dwelling, to add the names of any persons qualified to register, and to remove the names of any disqualified. Registrars were also to accept new registrants at their offices the weeks commencing the first Monday in June of each year, and the second Monday in September of every even numbered year. The annual June registrations made preparations for the election of local and territorial officers in August; and the September registration, held alternate even numbered years, prepared for the delegate election held in November of those years. These registrations were necessary because of the provisions of Utah law which set elections as shown in the following tables.

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[1] Ibid., I (1888), 325.

TABLE 2

TIME AND FREQUENCY OF ELECTION OF UTAH OFFICIALS--1878 LAW*

Office	Month Elected Even Numbered Years	Month Elected Odd Numbered Years	Frequency of Election
Legislative Assembly ..	.....	First Mon. in August	Biennially
Terr. Auditor	First Mon. in August	.....	Biennially
Terr. Treasurer	August	.....	Biennially
Selectmen	August	August	Annually
County Probate Judge ..	August	.....	Biennially
County Clerk	August	.....	Biennially
Sherrif	August	.....	Biennially
County Attorney	August	.....	Biennially
County Treasurer	August	.....	Biennially
Coroner	August	.....	Biennially
Assessor	August	.....	Biennially
Fence Viewers	.....	August	Biennially
Delegate to Cong.	November	.....	Biennially
City Elections	Whenever prescribed by		city law

*Source: Compiled Laws of Utah, 1888.

TABLE 3

DATES OF MUNICIPAL ELECTIONS*

	Even Numbered Years		Odd Numbered Years
Feb. 3 ...	Kaysville	Feb. 9 ...	Ogden
10 ...	Salt Lake	Aug. 3 ...	American Fork
10 ...	Provo	3 ...	Payson
10 ...	Richmond	3 ...	Nephi
March 3 ...	Logan	3 ...	Pleasant Grove
3 ...	Wellsville	3 ...	Lehi
3 ...	St. George	3 ...	Manti
5 ...	Park City	3 ...	Alpine
5 ...	Smithfield	3 ...	Spanish Fork
5 ...	Mt. Pleasant	3 ...	Coalville
Aug. 4 ...	Bear River	3 ...	Brigham
4 ...	Corinne	3 ...	Park City
4 ...	Fairview	3 ...	Tooele
4 ...	Fillmore	3 ...	Springville
4 ...	Hyrum	3 ...	Fillmore
4 ...	Moroni	3 ...	Corinne
4 ...	Mindon	3 ...	Kanab
4 ...	Morgan	3 ...	Salina
4 ...	Parowan	3 ...	Heber
4 ...	Richfield	3 ...	Monroe
4 ...	Spring City	3 ...	Santaquin
4 ...	Salem	3 ...	Huntington
4 ...	Washington	3 ...	Midway
4 ...	Willard		
Nov. 20 ...	Beaver		
Dec. 8 ...	Ephriam		

*Source: Utah Commission Minutes. /Each municipal election demanded a separate registration./

The decision, as to the eligibility of any person to register, was left with the registration officer concerned, since the law made no provision for appeal. Completed registry lists were sent to the clerk of the County Court[1] who copied and posted them fifteen days before any election. Challenges to the right of any registered person to vote could be made by a qualified elector until sunset of the fifth day preceding the day of election. Challenges were required to be in writing and to be delivered to the senior justice of the peace for the precinct concerned, who had power to hear the objections and determine the voting eligibility of the challenged registrant. Registration for municipal elections was as provided by law of the city concerned.

Part II--The Commission's Rules

The Edmunds law superceded many provisions of Utah election laws and took control of the election machinery away from the Mormon majority by divesting all Utah officials of their election duties and making the Utah Commission and its appointees responsible for the performance of such duties.[2] That law also set up new standards for voting eligibility. The Commission was obliged, therefore, prior to holding any

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[1]The County Court was the governing body of the county composed of the Probate Judge and three Selectmen. See Compiled Laws of Utah (1876), p. 123.

[2]Edmunds Act, sec. 9.

election under its supervision to determine: (1) the method it would follow in procuring registration and election personnel, and (2) the rules covering the election, including a definition of those eligible to vote. Following the Commission's decision to hold an election for delegate to Congress in 1882, it immediately undertook to draft a set of rules which were promulgated August 24, 1882. They provided that:[1]

1. One registration officer for each county and one deputy registration officer for each precinct would be appointed by the Utah Commission.

2. The county registration officer so appointed was to procure by Sept. 2 from the county clerk the official registration lists, these were to be divided among the proper precinct deputies who were to revise the lists by adding the names of voters who proved themselves to be eligible and to remove the names of those proved ineligible. All persons, in order to be eligible to vote "must take and subscribe the following oath or affirmation:"

I_____, being first duly sworn, (or affirmed) depose and say, that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of_____ one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States, and a tax-payer in this territory, (or if a female) I am a native born, or naturalized, or the wife, widow or daughter, (as the case may be) of a native born or naturalized citizen of the United States; and I do further solemnly swear (or affirm) that I am not a bigamist nor a polygamist; that I have not violated the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman

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[1] U. C. Minutes, A, 21-7. Underlining by the author.

which has been entered into, or continued in violation of the said laws of the United States prohibiting bigamy or polygamy; (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy and bigamy.

3. The decisions of the registration officers were to be subject to appeal to the Commission.

4. The registration officers were to send to the Commission "the names of three persons . . . to act as judges of election." The persons selected would be notified by the Commission and were required to take an oath that they would faithfully and honestly execute the duties of their office, and that they were not bigamists or polygamists.

5. Registration officers were to hold office for one year or during the pleasure of the Commission.

6. Registration officers were to receive a salary of four dollars per day, deputies three dollars.

An analysis of the administrative provisions of the Commission's rules shows that thereby it had established itself as the supervisory authority for all Utah elections, had substituted its own appointing power for local control, and had established itself as general administrator to whom election officials were responsible and from whom all election authority flowed. This drastic departure from existing procedure attracted little attention, however, as compared to the provision of the oath which excluded voters who cohabited with more than one woman "in the marriage relation," but made no mention of persons who cohabited with more than one woman

outside the marriage relation. The Mormon reaction to this provision was immediate and violent. The wording of the oath seemed to them to be proof positive that, as they had contended, the Edmunds law was not aimed at the immorality of polygamy at all,[1] but at the religious belief of the Mormon people and at their political influence, which if destroyed would leave the Gentile minority in political control.[2] The provision was attacked as an unwarranted act of legislation performed without legal basis in law.[3] This point was well taken, for nowhere in the provisions of the Edmunds Act could be found a restriction similar to that enacted by the Commission. The Commission had, therefore, by the adoption of its rule "in the marriage relation" performed a legislative function just as effectively as if it had been done by Congress. Its decision

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[1]Said the Deseret News of August 25, 1882:
"Let us look at the effect of this provision. It will exclude from the registry lists, and consequently from the polls, all persons who cohabit with more than one woman in the marriage relation, but let in the libertine, the whoremonger, the adulterer and the seducer; it will also exclude every woman in the marriage relation, whether by her consent or not, and let in prostitutes and harlots, however vile and polluted. A married man who consorts with the denizens of the lowest haunts of vice, or keeps any number of mistresses, or leads astray other men's wives, or betrays and seduces innocent girls, is, under this provision of the Commissioners, competent to be registered and to exercise the suffrage; but a man who has married two or more wives and lives with them in the marriage relation, is not permitted to register and vote."

[2]Ibid., August 29, 1882.

[3]Ibid.

to adopt such a provision had been reached "by giving due regard to the evident intention of Congress" and interpreting that intent to give the Commission wide latitude for action in discriminating between legal and illegal voters.[1]

Two very important interpretations of the law had now been made by the Commission: (1) that it possessed full administrative and supervisory power over all election personnel appointed by it, and (2) that it would administer the

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[1] Mess. and Docs., Int. Dept., II (1882-83), 1004. The attitude of the Commission in arriving at the oath provision was stated in its annual report:

"In the absence of instructions or judicial decisions to aid us in the interpretation of the law prescribing our duties, we were obliged to construe it for ourselves, and in doing so we endeavored to conform to the well-known canons for the construction of statutes, having a due regard for the evident intention of Congress in this act, construed with other acts of Congress, in pari materia.

"'Polygamists and bigamists,' and persons 'cohabitating with more than one woman,' are, by section 8, to be excluded from voting and holding office.

"Immediately upon addressing ourselves to the discharge of our duties, we were obliged to consider the scope and extent of this exclusion.

"Did Congress intend that those only should be excluded, who at the very time of the registration or election, were then living in polygamy, or in 'unlawful cohabitation with more than one woman?' If so, such a construction would render this section a perfect nullity. The means of evasion are patent to the dullest comprehension. We, therefore, concluded that neither the letter nor spirit of the statute required such a narrow construction, and, in our published 'rules and regulations,' we gave the exclusion a wider scope and application. . . .

"Were we to exclude only those who had been convicted of the crime of polygamy in the courts? This construction would have been derided by everybody in this Territory. . . . We concluded that it was the intention of Congress to leave it largely to the discretion of the Commission, to determine the means of discriminating between legal and illegal voters."

provisions of the Edmunds law to discriminate only against Mormons who cohabited in the polygamous relationship of marriage. Each of these assumptions was to be shortly attacked in the courts, and three years later, 1885, were declared by the United States Supreme Court to be in error.[1] However, pending that decision, the rules as announced in 1882 continued in force. Through this broad interpretation of its powers, the Commission had undertaken to perform the following functions: (1) the appointment and the supervision of registrars, (2) the determination and supervision of the registration process, (3) the determination of those eligible to register and vote, (4) the appointment and supervision of judges of election, and (5) the supervision of the voting process, including canvassing and issuance of election certificates. The operations and the effects thereof will be analyzed in the following sections of this chapter.

Part III--Registration

Procedure.--The rules of the Commission established the procedure for the appointment of registration officers as follows: (1) the Commission would appoint one registrar for each county, one deputy registrar for each precinct, and registrars for local elections as needed, (2) the county registrar, when appointed, would send to the Commission his

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[1] Murphy v. Ramsey, 114 U.S. 44 (1885).

recommendations of suitable persons to be precinct deputies, (3) these names would be reviewed by the Commission, and if found satisfactory would be appointed by it, and (4) all personnel was required to take, and file with the Commission, an oath as to the faithful performance of duty and as to eligibility for office. Therefore, all registration personnel was commissioned by, and to be directed by, the Commission.[1] Another far reaching policy, although not stated as a part of its rules, was adopted by the Commission when it determined that "insofar as it was practicable to do so" non-Mormons would be appointed to the registration offices.[2]

The selection of the first group of registrars for the 1882 election presented a knotty problem for the Commission. It was not until August 21 that it had decided to hold that election,[3] which meant that it had exactly three weeks to make complete preparations, including the drafting of rules, the appointment of registration agents, and the procurement of registration offices in each county and precinct of the territory. The deadline was created by the fact that the only provision of Utah law which would justify the Commission to hold any kind of registration prior to the delegate election provided that names of eligible voters might be added to the

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[1] U. C. Minutes, A, 18. [2] Ibid., p. 34.

[3] Ibid., pp. 15-38.

voting lists by the registrar at his office during the week commencing the second Monday in September.[1] The fact that the Commission labored to meet the deadline indicates that it did not consider its authority to be sufficiently broad to permit it to change registration or election dates. It did, however, stretch the provisions of the Utah law by announcing in its rules that a complete revision of voting lists would be made during the week specified, and that all persons in order to vote would be required to appear at the registrar's office and take the prescribed oath. Any who did not so appear and take the oath were stricken from the voting lists. The Utah law provided merely that any whose names had been omitted might be added at the time specified--it did not cover a completely new revision amounting to a new registration.[2]

Although handicapped by its lack of acquaintance in the territory, the Commission, in addition to the preparation and issuance of its rules, successfully appointed twenty-four county and two hundred and thirty precinct registrars in the allotted time. This was accomplished, however, only at the expense of "great embarrassment" to the

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[1] Compiled Laws of Utah, I (1888), sec. 243, p. 320.

[2] Ibid., secs. 241 and 243.

Commission. Unacquainted as they were, and facing the necessity of securing a totally new list of officials composed wherever possible of non-Mormons, they depended almost entirely on the advice of local Gentile residents.[1] Territorial Secretary Thomas, who as ex-officio Secretary of the Commission and as a man well acquainted in the Territory, was in the best position to offer advice, and the Commission relied heavily on his recommendations.[2] Evenso, it was subject to considerable abuse from both factions of the press for its selections;[3] and even some of those persons selected for appointment to office not only refused the appointment but proceeded to abuse the Commission for the manner of its operations and content of its rules.[4]

Distribution of registration personnel.--The success experienced by the Commission in its policy of selecting non-Mormon registrars wherever possible, and the degree to which the monopolistic position of the Mormons was altered by that policy, is indicated in the following table showing the distribution of county registrars by Mormon and non-Mormon groups.[5]

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[1] U. C. Minutes, A, 34.

[2] Ibid., p. 38.

[3] Salt Lake Tribune, Sept. 1, 1882.

[4] Whitney, op. cit., III, 233.

[5] Deseret News, Sept. 1, 1882.

TABLE 4

1882 DISTRIBUTION OF COUNTY REGISTRARS
BY MORMON AND NON-MORMON GROUPS*

Counties	County Population in Which Mormon Registrar Appointed	Gentiles	Apostates
Beaver	.....	3,918	.....
Box Elder	.....	.....	6,761
Cache	.....	.....	12,562
Davis	.....	.....	5,279
Emery	556	.....	.....
Iron	.....	.....	4,013
Juab	3,474	.....	.....
Kane	3,085	.....	.....
Millard	.....	.....	3,727
Morgan	.....	.....	1,783
Piute	.....	1,651	.....
Rich	1,263	.....	.....
Salt Lake	.....	31,977	.....
San Juan	204	.....	.....
Sanpete	.....	.....	11,557
Sevier	.....	.....	4,457
Summit	.....	4,921	.....
Tooele	.....	4,497	.....
Uintah	799	.....	.....
Utah	.....	.....	17,973
Wasatch	2,927	.....	.....
Washington	.....	4,235	.....
Weber	.....	12,344	.....
Garfield	.....	.....	.....
Total	12,308	63,543	68,112

*Source: Deseret News, Sept. 1, 1882.

A recapitulation of the table shows the following:

Mormon registrars supervised	12,308	people
Gentile registrars supervised	63,543	"
Apostate Mormon registrars supervised ..	68,112	"
Total	143,963	"

The degree to which this shift denied the principle of majority control is emphasized when the population of Utah is analyzed according to the various religious groups.[1]

TABLE 5

1880 POPULATION OF UTAH BY RELIGIOUS GROUPS*

Group	Population	App. Percent of Total Population	No. of Registrars Allocated by Commission	No. of People Supervised	Percent of People Supervised
Mormons	120,283	85%	8	12,308	9%
Gentiles	15,872	10%	7	63,548	44%
Apostate Mormons	7,808	5%	9	68,112	47%

*Source: Deseret News, Sept. 1, 1882.

Mormons, representing nearly 85 percent of the population, were allocated one third of the registrars in point of numbers, but these registrars supervised the registration

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[1] Ibid.

in counties having only nine percent of the territory's population. Gentiles, comprising approximately ten percent of the population, were appointed to supervise registration in counties containing forty-four percent of the people; and apostate Mormons, while aggregating only five percent of the population, controlled registration for forty-seven percent. In spite of frequent Mormon objection, this policy of appointing non-Mormon registrars was continued by the Commission until the abandonment of polygamy, and the adoption of national parties in Utah brought about changed conditions which resulted in its abandonment.

Personnel turnover.--Throughout its tenure in office, the Utah Commission suffered only mildly from the problem of personnel turnover. This was true even in the early period of its administration when it was more or less "feeling" its administrative way. The experience of the Commission in this regard in the first four years of making appointments to the office of county registrar is illustrated in the following table. Columns one and two of the table indicate that although the Commission had selected the registration officers for the 1882 election in a great hurry the choices proved satisfactory in a majority of the cases, for in preparation for the 1883 election the Commission was obliged to make new appointments in only nine counties and reappointed the same registrar in fifteen counties. The degree to which the

TABLE 6

REAPPOINTMENTS OF
COUNTY REGISTRARS 1882-1885*

	1883 Compared with 1882		1884 Compared with 1883		1885 Compared with 1884	
	Reappoint-ment	New Appoint-ment	Reappoint-ment	New Appoint-ment	Reappoint-ment	New Appoint-ment
Beaver	X		X		X	
Box Elder		X	X		X	
Cache	X		X		X	
Davis	X		X		X	
Garfield	X		X			X
Emery		X	X		X	
Iron		X	X			X
Juab	X		X			X
Kane		X	X		X	
Morgan		X		X	X	
Millard		X	X			X
Piute	X		X		X	
Rich	X	X	X			X
Salt Lake			X		X	
San Juan	X		X		X	
Sanpete	X		X		X	
Sevier	X		X		X	
Summit		X	X			X
Tooele	X		X		X	
Uintah		X	X		X	
Utah	X		X		X	
Wasatch	X		X		X	
Washington	X		X		X	
Weber	X		X		X	
Total	15	9	23	1	18	6

*Source: Compiled from Utah Commission Minutes.

changes in personnel were occasioned by dissatisfaction on the part of the Commission with the work of the registrar is impossible to assess. The turnover may have been occasioned as much by the lack of interest on the part of the registrars concerned as by their poor performance. However, since the 1883 appointments were the first which the Commission made when it had adequate time for consideration as well as more thorough acquaintance with the community, it is interesting to note that it was so well pleased with its selections that it reappointed for 1884 all but one of them. The list of appointees in 1885 again indicated an increased turnover as compared with 1884, but one of modest proportions. Approximately this same degree of consistency was also observable in the reappointment of precinct registrars and continued with minor fluctuations throughout much of the administration of the Commission. The last three years of its administration saw more frequent turnover because of its policy of appointing Mormons as well as non-Mormons.

Number of registrars appointed.--The number of precinct registrars appointed by the Commission in the various counties during the first four years of its activity is shown in columns one to four of table 7.

It is interesting to note that during this period the number of precincts remained rather uniform, with the number of Commission appointees varying little. This

TABLE 7

PRECINCT REGISTRARS APPOINTED BY THE UTAH COMMISSION*

	1882	1883	1884	1885
Beaver	8	7	7	6
Box Elder	15	15	15	15
Cache	16	16	16	17
Davis	8	7	8	8
Garfield	3	5	5	5
Emery	6	6	8	11
Iron	5	5	5	5
Juab	4	4	4	4
Kane	6	6	7	7
Morgan	5	5	5	5
Millard	8	7	10	9
Piute	5	5	7	10
Rich	5	5	5	5
Salt Lake	32	26	30	31
San Juan	2	2	3	2
Sanpete	14	14	14	15
Sevier	12	15	13	13
Summit	13	12	12	12
Tooele	10	11	10	11
Uintah	1	2	2	2
Utah	16	16	19	19
Wasatch	4	4	6	5
Washington	18	18	18	18
Weber	14	16	15	17
Total	230	229	235	252

*Source: Compiled from Utah Commission Minutes.

consistent condition continued throughout the Commission's activities, resulting in a steady number of appointments to be made in preparation for each registration. This is statistically illustrated in table 8, which shows the total number of registration personnel appointed by the Commission for each

year of its operation. Figures do not include registrars appointed for municipal elections.

TABLE 8

TOTAL COUNTY AND PRECINCT REGISTRARS APPOINTED BY YEARS INDICATED*

Year	No. Apptd.	Year	No. Apptd.
1882	254	1890	348
1883	253	1891	345
1884	259	1892	344
1885	275	1893	350[a]
1886	280	1894	352
1887	302[a]	1895	359[a]
1888	318	1896	0
1889	363	Total .	4,622

*Source: Compiled from Utah Commission Minutes.
[a]Approximations. Exact figures are not available.

If the number of registrars appointed for city elections were added to the number of county and precinct registrars, it is evident that during its administration the Commission appointed well over five thousand persons as registrars--a sizable personnel function.

Control and supervision of registration agents.--As noted previously, the original instructions issued to the registration agents established them as subordinate employees, subject to the direction of the Utah Commission. They were instructed explicitly as to the performance of their duties,

as to the interpretation of regulations, and were informed that any of their decisions might be challenged and appealed to the Commission. The county registrar was instructed to hold meetings with his precinct officers in order that the rules might be explained to them and a degree of uniformity of administration and interpretation might prevail. For the first three years of the Commission's work, instructions were followed fairly well and a good deal of standardization in procedures was achieved. Instances of allegedly poor or excessively partial performance were investigated by the Commission, and corrective action taken in those instances in which a remedy was deemed desirable. One such interesting incident occurred in 1885. On May 10th of that year, citizens of Brigham City sent a petition to the Commission seeking the removal of the local registration agent. The document read:

> We the undersigned . . . petition your honorable body to remove Charles Gilmore deputy registrar for that precinct, for the following reasons to wit:
>
> First--Through his violence of temper, women are afraid to admit him in their houses when he calls for the purpose of registration.
>
> Second--That at and before the last election he erased the names of legal voters and refused them the right of franchise.
>
> Third--That he has threatened the lives of some of the peaceable citizens with a drawn revolver without a just cause or provocation.
>
> Fourth--He does not believe in a God and is therefore incompetent to administer the oath to electors. With your kind consideration of this, etc. . . .[1]
>
> . . . . . .

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[1] Salt Lake Herald, May 10, 1885. Quoted in "Journal History."

Mr. Gilmore, upon hearing of the petition, saved the Commission the necessity of removing him by resigning voluntarily; whereupon, Mr. Wm. A. Barron, one of the signers of the petition and one who had been threatened by Gilmore's revolver, was appointed his successor.[1]

Frequent appeals were taken from the decisions of the registrars to the Commission, which in the majority of instances upheld the action of the registration officials.[2] Questions demanding interpretation of the law were sent to the Commission, and it promptly returned its verdict, which verdict was generally followed by the registration officer.[3] This relationship of principal and agent between the Commission and the registrars continued for three years, from 1882-1885, when it was disrupted March 23, 1885 by the decision of the Supreme Court in the case of Murphy v. Ramsey--[4] which case grew out of actions taken by registrars and the Commission in the 1882 election. Appellants Murphy, Pratt, Randall, Clawson, and Barlow had been denied registration by the precinct registrars, which action had been upheld by the Commission. Each of the appellants claimed that the denial of registration and consequent voting privileges had been

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[1] Ibid., May 13,1885. [2] U. C. Minutes, A, 59.

[3] Ibid., p. 69.

[4] Murphy v. Ramsey, 114 U.S. 15 (1885).

unlawful. Suit was entered against the Commissioners and certain registrars for damages of $1,200 for each appellant. The five cases were joined and were designed so as to test the constitutionality of the Edmunds law, as well as the legality of the various rulings of the Commission and the action of the registration officers. The case was decided by the Supreme Court March 23, 1885.[1]

The constitutionality of the Edmunds law had been attacked on the ground that its passage was beyond the legal power of Congress, that it constituted ex post facto legislation, and that its provisions created a bill of attainder. The Court saw no validity in any of the arguments, and upheld the full constitutionality of the Act. Specifically, it ruled: (1) that Congress had not exceeded its power in passing the Edmunds bill, since as agent of the people it could exercise supreme authority over the territories of the United States,[2] (2) the Edmunds law was not ex post facto because it operated on the existing state of the individual and did not

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[1] Ibid.

[2] Said Mr. Justice Mathews, speaking for the Court: "That question is, we think, no longer open to discussion. It has passed beyond the stage of controversy into final judgment. The people of the United States as sovereign owners of the national Territories, have supreme power over them and their inhabitants. Congress as agent of the people exercises that authority."

concern itself with past actions,[1] and (3) that it did not constitute a bill of attainder because the requirements of the law were for the "sole purpose of determining as in the case of every other condition attached to the right of suffrage, the qualification of one who alleges his right to vote."[2]

As to the liability of the Commission for refusing registration to the persons concerned, the court ruled that the Commissioners had no legal responsibility for the acts of the registrars inasmuch as there was "no relation between the board and the officers appointed by them of principal

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[1] Murphy v. Ramsey, 114 U.S. 15 (1885).

"It is not, therefore, because the person has committed the offense of bigamy or polygamy, at some previous time, in violation of some existing statute, and as an additional punishment for its commission that he is disfranchised by the act of Congress of March 22, 1882; nor because he is guilty of the offense, as defined and punished by the terms of that act; but, because having at some time entered into a bigamous or polygamous relation, by a marriage with a second or third wife, while the first was living, he still maintains it, and has not dissolved it, although for the time being he restricts actual cohabitation to but one. He might, in fact abstain from cohabitation at all. . . . The disfranchisement operates upon the existing state and condition of the person . . . it is, therefore, not retrospective."

[2] Ibid.

"It is precisely similar to an inquiry into the fact of nativity, of age, or of any other status made necessary by law as a condition of elective franchise.

"It rests with Congress to say whether, in a given case any territory shall participate in the election of its officers or the making of its laws; and it may, therefore, or at any time modify or abridge it, as it may deem expedient."

and agent." Expanding this view, the court pointed out that the registration officers "were not bound" to obey the direction of the Commission, and any oath which had been demanded by the registration officers was demanded upon the authority of the officer concerned and not the Utah Commission. Any wrong resulting therefrom was, therefore, the responsibility of the registration officer, and not of the Commission. Consequently, no damages could be assessed against the Commissioners.[1]

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[1] Ibid. The words of the opinion here are significant:

"An examination of the ninth section of the Act of March 22, 1882, providing for the appointment and prescribing the duties and powers of that board, shows that they have no functions whatever in respect to the registration of voters, except the appointment of officers, in place of those previously authorized, whose offices are by that section of the law declared to be vacant; and the persons appointed to succeed them are not subject to the direction and control of the board. . . . The board are not authorized to prescribe rules for governing them in the performance of these duties, much less to prescribe any qualifications for voters as a condition of registration. . . .

"It follows that the rules promulgated by the board, prescribing the form of oath to be exacted of persons offering to register as voters, and which constitute the directions under which it is alleged the registration officers acted, were without force, and no effect can be given to them. It cannot be alleged that they had the effect in law of preventing the registration of the plaintiffs, for the registration officers were not bound to obey them; and if they did so, they did it in their own wrong. There was no relation between the board and the officers appointed by them of principal and agent, so as to make the members of the former liable for what the latter may have illegally done under their instruction, and, therefore, no connection in law between the acts of the board as charged and the wrongs complained of."

The ruling in the Murphy case established an entirely new relationship between the Commission and its registration agents and obliged the Commission to recede from its position as the director of Utah electoral operations. Consequently, all subsequent circulars which it issued told the officers of things which they "may do," and merely made suggestions as to action which the registration officer might take. These suggestions were followed sufficiently well by the registrars that no major problems in the relationship between the Commission and the registrars developed until after the passage of the Edmunds-Tucker Act of 1887. That law had provided that each prospective registrant, as a prerequisite to registration, would swear:

> That he is over twenty-one years of age, and has resided in the Territory of Utah for six months then last passed and in the precinct for one month immediately preceding the date thereof, and that he is a native-born (or naturalized, as the case may be) citizen of the United States, and further state in such oath or affirmation his full name, with his age, place of business, his status, whether single or married, and, if married, the name of his lawful wife, and that he will support the Constitution of the United States and will faithfully obey the laws thereof, and especially will obey the act of Congress approved March twenty-second, eighteen hundred and eighty-two, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," and will also obey this act in respect of the crimes in said act defined and forbidden, and that he will not, directly or indirectly, aid or abet, counsel or advise, any other persons to commit any of said crimes.[1]

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[1] Edmunds-Tucker Act, 24 Stat. 635 (1887).

The fact that Congress did not specifically word the oath in a form directly usable by the registration agents led the Commission to include in its March 19 circular of explanation to its registrars,[1] regarding the effect of the Edmunds-Tucker law, a suggestion that the oath required by that law "may be formulated as follows:"

> I . . . . . being duly sworn (or affirmed) depose and say that I am over twenty-one years of age; that I have resided in the Territory of Utah for six months last past, and in this precinct for one month immediately preceding the date hereof; and that I am a native-born (or naturalized--as the case may be) citizen of the United States; that my full name is . . . . . ; that I am . . . . . years of age; that my place of business is . . . . . ; that I am a (single or) married man; that the name of my lawful wife is . . . . . ; and that I will support the Constitution of the United States, and will faithfully obey the laws thereof, and especially will obey the Act of Congress approved March 22, 1882, entitled: "An Act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes," and that I will also obey the Act of Congress of March 3, 1887, entitled: "An Act to amend an Act entitled an act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes, approved March 22nd, 1882," in respect of the crimes in said act defined and forbidden, and that I will not, directly or indirectly, aid or abet, counsel or advise any other person to commit any of said crimes defined by acts of Congress, as adultery and fornication.
>
> Although the person applying to have his name registered as a voter may have made the foregoing oath, yet if the registrar shall, for reasonable or probable cause, believe that the applicant is then, in fact, a bigamist, polygamist, or living in unlawful cohabitation, incest, adultery, or fornication, in our opinion the registrar may require the

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[1] U. C. Minutes, B, 397-99.

applicant to make the following additional affidavit:

TERRITORY OF UTAH,
County of _____,ss:

I,_____ _____, further swear (or affirm) that I am not a bigamist, polygamist, or living in unlawful cohabitation, or associating or cohabitating polygamously with persons of the other sex, and that I have not been convicted of the crime of bigamy, polygamy, unlawful cohabitation, incest, adultery, or fornication.

_____ _____.

Subscribed and sworn to before me on this _____day of _____, 188__.

_____ _____,
Deputy Registration Officer
for _____ Precinct,
_____ County.[1]

The Commission's action, in this respect, was immediately attacked by both factions. The Mormons were offended because they maintained that under the theory of the Murphy v. Ramsey decision the Commission had no authority to even suggest an oath. The members of the Loyal League objected because the provisions of the Commission's oath were too mild. The League, a more or less secret anti-Mormon organization composed of some of the more radical Gentiles, had been established in 1886 with the purpose of opposing the political power of the Mormon church,[2] and now sought to secure the

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[1]Ibid.

[2]Whitney, op. cit., III, 517 states that the purpose of the Loyal League was "To combine the loyal people of Utah,

imposition of its version of the oath demanded by the Edmunds-Tucker law. As early as March 4, 1887, members of the League had called upon the Commission to encourage that body to draft a more expansive oath than the one rumored then to be in preparation by the Commission.[1] Their request was not complied with, and the Commission issued its version of the oath. Again, April 11, 1887, R. N. Baskin and F. E. Dooly, representing the League, called upon the Commission to "insist upon a change in the registration oath.[2] They presented the following as being satisfactory to the Loyal League of Utah:

> I will support the Constitution of the United States and will faithfully obey the laws thereof; that I will obey the acts of Congress prohibiting polygamy, bigamy, unlawful cohabitation, incest, adultery and fornication; that I will not hereafter, in any Territory of the United States at any time, in obedience to any alleged revelation, or to any counsel advise, or command, from any source whatever, or under any circumstances, enter into plural or polygamous marriage, or have or take more wives than one, or cohabit with more than one woman; that I will not at any time hereafter, directly or indirectly, aid or abet, counsel or advise, any person to have or to take more wives than one, or to cohabit with more than one woman, or to commit incest, adultery or fornication; that I am not a bigamist or polygamist; that I do not cohabit polygamously with persons of the other sex; and that I have not been

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male and female, irrespective of politics, in opposition to the political rule and the law defying practices of the so-called Mormon Church; to oppose the admission of Utah into the Union until she has the substance as well as the form of republican government; to raise money to maintain agents in Washington or elsewhere to labor for these ends."

[1]Carlton, op. cit., p. 107. [2]Ibid., p. 108.

convicted of any of the offenses above mentioned.[1]

The Commission refused the request on the basis the oath it had already recommended was in accordance with the law and the intent of Congress which was that all male persons of proper age and residence should vote if willing to take the prescribed oath. The Commission had thus determined that the law was to operate on the existing state of the individual concerned. The provisions of the League's oath, on the other hand, indicates that the leaders of that body wished the law to be applied in such a way that a prospective voter would be required not only to swear that he was, at the time he presented himself, living in accordance with the provisions of the law, but also to demand of him a pledge that his future conduct would not violate the law. Commissioner Carlton observed that, in his opinion, the League oath was not authorized by the law because it demanded "an inquisitorial catechism of a metaphysical character by the registrars, as to whether the party might at some time in the future change his mind and go into polygamy, or under certain seductive temptations might commit fornication or adultery."[2]

The Commission's action was again condemned by the Loyal League[3] which, having failed to win the Commission to

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[1] Ibid., p. 109. [2] Ibid., p. 112.

[3] Ibid., p. 111. Said Mr. Carlton:
"It will scarcely be believed by persons outside of Utah, that this action of the Commission provoked another war

its point of view, now attempted to secure the adoption of its oath by going directly to the registrars, who, under the terms of the Murphy case, were free to devise such oath as they determined to be fit. Copies of the League's oath were sent to all county and precinct registrars in company with the following letter:

> To the County and Precinct Registrars of Utah Territory:
>
> We, the undersigned, members of the Bar of Utah, have carefully examined the accompanying form of oath, and confidently advise all Registrars and Judges of Election in this Territory that the said oath is in full accord with the so-called "Edmunds-Tucker law, and is a suitable oath to be required of all persons before registration, and we will defend, free of cost to you, all actions at law that may be brought against any Registrars or Judges of Election for the requirement of this oath. Under the decision of the Supreme Court of the United States, in the case of Murphy versus Ramsey, it was held that the Utah Commissioners have not the power to prescribe the form of oath to be administered by the Registrars, but that such Registrars must and shall satisfy themselves that such person applying for registration is entitled to such registration.
>
> (signed) Thomas Marshall
> C. S. Varian
> P. L. Williams
> W. H. Dickson
> R. N. Baskin
> C. W. Bennett[1]

At least two registrars, John Whitbeck of Juab County

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against them. Some of the Loyal League's exponents poured out the vials of their wrath, bottles and demi-johns of wrath, upon the devoted heads of the Commission, especially the chairman. . . . The cause of the tempest in a teapot was that the agitators wanted the Commission to act the part of offensive partisans, and they refused to be used that way."

[1]Deseret News, April 29, 1887.

and Neils Anderson of Richfield, adopted the League's oath and demanded it of all registrants.[1] This action, by the League and the two registrars, constituted a direct challenge to the Commission's influence and a genuine threat to its operating procedures. Hitherto, all of the Commission's "suggestions" had been followed, but now certain of the registrars were pursuing a course which the Commission itself had refused to take. In this situation, the Commission could have relied upon the Murphy v. Ramsey decision and assumed that it had no responsibility in the matter. Evidently, however, it considered the challenge so serious, and the need to protect its prestige and procedures so great, that it promptly removed the registrars concerned,[2] thereby effectively putting an end to their lack of cooperation.

This action by the Commission in removing the offending registrars represented an interesting administrative and legal situation. Thereby the Commission not only effectively preserved the power of its "suggestions," but in effect set aside a portion of the Supreme Court's ruling in Murphy v. Ramsey. That case had maintained that the registrars were not agents of the Commission and were, therefore, not subject to its direction and could prescribe whatever oath they desired. This would appear to protect the registrars in acting

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[1] U. C. Minutes, B, 440-441.

[2] Ibid.

independently. However, the Court in establishing the independence of the registrars, failed to provide the most essential item of independence, that of tenure in office. The Courts decision, while stating that the registrars might act independently, made no provision that those who so acted could continue in office. The power of removal exercised by the Commission, therefore, from the standpoint of practical administration, made the registrars as subject to the will of the Commission as if the Courts ruling had explicitly provided such control. The exercise of discretion on the part of registrars in reality became impossible when such discretion was opposed by the Commission. No more effective way of limiting the operation of discretion in public office exists than to remove the person concerned from the office which provides the authority upon which the discretionary action is based. Nor was the promise of legal aid from the Loyal League of any value for no actions at law were involved, the power of the Commission to remove being unchallenged.

The Commission's removal action so infuriated the Loyal League and the Tribune that that journal threatened the Commission with an exposure to Congress and urged that the curtain be "rung down upon the farce of the Utah Commission."[1] The Deseret News, as might be expected, found the Commission's

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[1] Salt Lake Tribune, May 4, 1887.

action to be wise and in conformity with the best principles of administration.[1]

Evidently the example and continued threat of removal of any registrar who grossly violated the "suggestions" of the Commission was an adequate administrative whip to keep the registrars in line, for no other examples of major deviation from the Commission's outlined and suggested procedure was observed until 1890 when another uprising against the Commission's authority took place. On August 2nd of that year, the Commission received word that a large number of names were being stricken from the rolls in Brigham City for the sole reason that the people concerned were Mormons. Commissioners Robertson and Williams were immediately appointed to investigate;[2] and following an interview with the registration officials, they reported that the mistakes being made were "through an error in judgment and not from any intention to disregard the law." Evidently "Kentucky Smith," eminent anti-Mormon attorney and author of the Idaho test oath, had advised the registrars that such action was legal.[3] However, the registrars concerned "with apparent willingness and frankness

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[1] Deseret News, May 4, 1887. Said the news: "This prompt action . . . was highly necessary. . . . It would be the height of absurdity and inconsistency, as well as a gross and inexcusable wrong, for the commission to retain in office any person of their appointment who acts in direct opposition to their instructions."

[2] U. C. Minutes, D, 455.

[3] Mess. and Docs., Int. Dept., III (1892-3), 464.

promised to restore the names in compliance with the instructions of the Commission."[1] In spite of their promise, however, the registrars evidently continued to exclude Mormons from the lists solely because they were of that religious affiliation. A second request of the Commission for the restoration of the deleted names was refused.[2] The fact that the election was immediately due left no time for removal of the offending officers and their replacement with more tractable personnel. For the first time, registration personnel had successfully defied the instructions of the Commission. This experience caused the Commission to send a special letter to the Secretary of Interior telling him of their humiliation because of lack of power and urging that the Commission be given authority "to direct and instruct its subordinates and appointees, and that some penalty should be fixed for their wilful violation of the law."[3] No such authority was ever granted the Commission, but neither were any more major revolts against its authority noted. The political atmosphere in Utah changed radically with the adoption of national parties in 1891, and elections shortly ceased to be primarily a pro and anti-Mormon fight--thus decreasing the temptation for actions such as that at Brigham

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[1] U. C. Minutes, D, 459.

[2] Ibid, p. 466.

[3] Ibid.

City. Furthermore, the Commission was quick to use the time honored administrative tool of removal to compensate for the legal loss of its supervisory power.

Part IV--Eligibility to Register and Vote

One of the recurring problems faced by the Utah Commission was that of interpreting the law to determine which of the residents of Utah were eligible to register and vote. The determinations of the Commission fall into several categories.

Polygamous relations.--The question of the effect of present or past polygamous relations upon the eligibility of the prospective voter was the most frequent decision made by the Commission.

It will be remembered that in its original rules the Commission had announced that all would be eligible to vote who could truthfully take the prescribed oath covering age, citizenship, residence, and the avowal that the prospective voter was not a polygamist or bigamist and that he did not cohabit with more than one woman "in the marriage relation." This instruction lacked three major definitions: (1) what is a polygamist, (2) what is a bigamist, and (3) what constitutes cohabitation "in the marriage relation." The Commission obviated the need of definition of the last two terms by adopting such a broad interpretation of the word "polygamist"

that all persons who might have committed the other offenses were included as polygamists. The occasion for the definition arose in 1882 when Mr. Wm. C. Bryan, Registration Officer for Juab County, asked the Commission if any man should be registered if he had at any time "violated the laws of the United States prohibiting bigamy or polygamy but at the time he may apply to be registered is not actually living with two or more wives?" Many polygamist Mormons, in an attempt to comply with the law prohibiting unlawful cohabitation, had ceased living with more than one wife, and some of these were seeking to register. Others had entered polygamy at some time in the past, but due to death of the plural wives were now living as monogamists. Many had so lived for years. After due consideration, the Commission decided that any person, male or female, who, in violation of the provisions of the Morrill Act of 1862 or the Edmunds Act of 1882, had entered into any of the relationships prohibited therein, was not a legal voter and could not be registered.[1] A few days later it extended its ruling to prohibit anyone from voting who had ever entered into polygamy, regardless of the time such relationship began or ceased.[2] The case in point involved a man whose polygamous relationships had ceased

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[1] Ibid., A, 32.

[2] Ibid., p. 53.

prior to the passage of the Morrill Act, the first law which made polygamy a crime. These obviously ex post facto rulings were issued by the Commission in carrying out what it determined was the intent of Congress--namely, that the Commission should exercise wide latitude in arriving at the means necessary for the transfer of political power from the polygamists of Utah. Conceding that the Commission should be forgiven some degree of over anxiousness in its desire to succeed, there seems to be little justification for five such prominent attorneys and judges as composed the Commission to make a ruling so lacking in legality or ingenuity. Evidently, the Board could find no way of permitting those to vote whose polygamous relationships had genuinely ceased, while at the same time excluding those who had merely ceased cohabiting polygamously since the passage of the Edmunds Act but retained a polygamous marriage relationship. An interesting circumstance which resulted from the Commission's ruling found many persons disfranchised who had apostatized from the Mormon Church, had given up polygamy, and had taken up the Liberal-Gentile cause.[1]

These two doctrines, "in the marriage relation," and "once a polygamist always a polygamist" remained as the Commission's basis for exclusion of polygamists until overthrown

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[1] Salt Lake Tribune, Sept. 2, 1882.

in 1885. Under them, the Commission successfully prevented approximately twelve thousand polygamists from registering and voting.[1]

The case which overthrew the Commission's interpretation was Murphy v. Ramsey,[2] the facts of which have been noted previously. That case defined those who were polygamists or bigamists in the following paragraph:

> A man is a polygamist or bigamist who, having previously married one wife, still living, and having another at the time when he presents himself to claim registration as a voter still maintains that relation to a plurality of wives, although from the date of the passage of the act of March 22, 1882 until the day he offers to register and to vote, he may not in fact have cohabited with more than one woman.

That ruling showed much more ingenuity than the Commission had managed to muster. While overthrowing the ex post facto phases of the Commission's rules and thereby allowing those, whose polygamous relations had genuinely ceased, to register and vote, the Court had managed to exclude all who had recently attempted to adjust to the provisions of the Edmunds Act by cohabiting with only one wife but continuing to maintain more than one woman as spouse. This provision placed a more equitable interpretation upon the Edmunds Act, and at the same time retained the "teeth" of that measure.

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[1] Mess. and Docs., Int. Dept., II (1882-3), 1005.

[2] Murphy v. Ramsey, 114 U.S. 36, (1885)

The case also declared in error the Commission's rule that only those who cohabit "in the marriage relation" were to be disfranchised. Said Mr. Justice Mathews, speaking for the Court:

> Cohabitation is but one of many incidents to the marriage relation. It is not essential to it. . . . The statute makes an express distinction between bigamists and polygamists on the one hand, and those who cohabit with more than one woman on the other; whereas if cohabitation with several wives was essential to the description . . . those words in the statute would be superfluous and unnecessary.

The Court had interpreted the intent of Congress to mean that anyone who cohabited with more than one woman, whether in or out of the marriage relation, was to be disfranchised--an interpretation which had long been supported by the Mormons.

The findings of the Court made necessary a new set of registration rules, which the Commission formulated and circulated to the registrars April 15, 1885,[1] advising them that:

1. Registration officers are required to exclude from the registry lists, every man who is a polygamist or bigamist, and every person cohabiting with any of the persons described as aforesaid.

2. A bigamist, (or polygamist) in the sense of the eighth section of the Edmund's law is a man who has entered into the state of plural marriage at any time in the past, and still maintains that relation--if not having been dissolved by death, divorce, or 'other effective manner,'--and he is still a polygamist even though he

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[1] U. C. Minutes, B, 29-39.

restricts his cohabitation to but one woman.

3. If a man has married several women and he has died, the surviving women (if otherwise qualified), are entitled to be registered.

4. If in such a case, all the wives, or all but one, have died or been divorced, the man is entitled to be registered.

5. The first or legal wife is not entitled to be registered, if at the time she offers to register she cohabits with a bigamist or polygamist, (unless the other wives are dead or divorced,) nor is she to be registered, if she cohabits with a person cohabiting with more than one woman.

6. The disfranchisement operates upon the existing state and condition of the person, and not upon a past offence. It is, therefore, not retrospective. He alone is deprived of his vote, who, when he offers to register is then in the state and condition of a bigamist or polygamist, or is then actually cohabiting with more than one woman.

The circular then informed the officers that it was their responsibility to exclude the illegal voter, and suggested the following forms of oaths which might be used:[1]

Oath for a man:

I . . . . . being first duly sworn (or affirmed) depose and say that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of . . . . one month immediately preceding the date hereof, and I am a native born, or naturalized, (as the case may be) citizen of the United States, and a taxpayer in this territory; and I do further swear (or affirm) that I am not a bigamist nor a polygamist; and that I do not cohabit with more than one woman.

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[1] Ibid.

Oath for a woman:

I . . . . . being first duly sworn (or affirmed) depose and say that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of . . . . one month immediately preceding the date hereof, (and am a native born or naturalized, or the wife, widow or daughter (as the case may be) of a native born or naturalized citizen of the United States.) I do further solemnly swear (or affirm) that I am not cohabiting with a bigamist, polygamist, or any person cohabiting with more than one woman.

So far as the records of the Commission indicate, the oaths were accepted by the registrars and no difficulty was encountered in the administration of the election. The principal result of the new oath form was to restore the franchise to a number of persons who had been disfranchised under the Commission's "once a polygamist, always a polygamist" ruling. Until the passage of the Edmunds-Tucker Act, which disfranchised all women, the interpretations of the law as outlined in Murphy v. Ramsey determined the eligibility of voters.

Part V--Woman Suffrage

Women had been entitled to vote in Utah since the passage of the act of February 12, 1870, which provided that:

> Every woman of the age of twenty-one years who has resided in this Territory six months next preceding any general or special election, born or naturalized in the United States or who is the wife, widow, or the daughter of a native born or naturalized citizen of the United States, shall be entitled to vote at any election in this Territory.[1]

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[1] Compiled Laws of Utah (1876), p. 88.

In spite of this law, however, pressure was applied against the Commission very early in its administration to declare the law invalid and deny the franchise to women. On Sunday, September 3, 1882, the Tribune ran a long article headlined "Shall the Women Vote?" and concluded the question in the negative. Supporting its conclusion, it pointed out: (1) that the Utah statute, providing for women suffrage, based that privilege not on the qualifications of the woman herself, but upon her relationship to her father or husband, (2) the suffrage statute did not require women to be taxpayers, while another provision of Utah law stated that only taxpayers could be voters, (3) that the Territorial Organic Act demanded that only citizens be allowed to vote, while the woman suffrage statute required only that the woman's father or husband be a citizen.[1] The newspapers arguments were backed up by a deputation of lawyers which appeared before the Commission, and after arguing against the legality of female franchise requested the Commission to deny the vote to women.[2]

The legal provisions on which the Liberals relied are found in Sections 5, of the Organic Act, which provides that the qualifications of voters and of office holders shall be such as shall be prescribed by the legislative Assembly, provided "that the right of suffrage and of holding office shall

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[1] Salt Lake Tribune, September 3, 1882.

[2] Carlton, op. cit., p. 51.

be exercised only by citizens of the United States. . . ,"[1] and section 4 of the Electoral Act of 1859 which stated that no person should be deemed a resident for voting purposes unless he is a taxpayer in the Territory.[2] The wording of these two provisions, taken alone, would appear to be sufficiently explicit to prevent any non-citizen and non-taxpayer from voting. However, in opposition to these two passages was the fact that the female franchise provision of Utah law had been in effect since 1870 with the implied consent of Congress. Had that body felt that Utah law in this regard was either unwise or opposed to the Organic Act it had had adequate time to make the fact known and to have effected a change. Furthermore, the provisions of Utah law which demanded that voters be taxpayers antidated the woman suffrage law by eleven years, having been passed in 1859.[3] According to the theory of law which gives precedence to that last passed, the woman suffrage statute would have status above the 1859 act. With respect to the question of female citizenship, the United States law then effective provided that the citizenship of the husband or father controlled that of the wife or children, providing they were eligible for naturalization.[4] These arguments

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[1] Compiled Laws of Utah (1876), p. 30.

[2] Ibid., p. 88. [3] Ibid., p. 87.

[4] Ferguson and McHenry, Elements of American Government (New York: McGraw Hill, 1950), p. 156.

favoring the continuation of the female franchise apparently were convincing to the Commission for it unanimously refused the request of the Liberal legal deputation. It should be noted that the Gentile element of Utah contained a much smaller percentage of women than did the Mormon element; therefore, the abolition of woman suffrage would aid the Gentile-Liberal cause.[1] The denial by the Commission, however, did not stop the Liberal efforts, for they now sought relief in the courts. Similar test cases were instituted in the three Utah judicial districts. Arrangements were made to have the cases from the First District in Ogden and the Third District in Salt Lake argued jointly before Justices Emerson and Hunter of those respective districts. Inasmuch as the facts were similar, it was decided that the conclusion reached in the Salt Lake case would be applicable to both. That case sought a writ of mandamus on behalf of Mrs. Florence Westcott, who had applied to register but was denied that privilege by deputy registrar William Showell of the First Salt Lake Precinct. Both Mrs. Westcott and Mr. Showell were Liberals and the case was devised to test the validity of the woman suffrage law.[2] Arguments were heard on September 14, with Judge Hunter handing down his opinion September 15--the decision upheld the full

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[1]Carlton, op. cit., p. 51.

[2]Whitney, op. cit., III, 235.

validity of the law in question.[1] Justice Emerson concurred. Judge Twiss, hearing the third case in Beaver, also upheld the validity of the woman suffrage law, but maintained that a woman must be a taxpayer in order to vote.[2] His decision on taxpaying qualifications was nullified, not only by the opinions of his fellow judges but also by a decision of the Utah Commission, October 19, which ruled that "every woman in the Territory, otherwise legally qualified, is entitled to vote at the November election, whether she is a taxpayer or not."[3] No further appeal was taken in the case inasmuch as under the organization of Utah courts then existing the three district judges formed the membership of the Supreme Court.[4] In view of their unanimous decision of the validity of the woman suffrage law, further appeal was useless.

In spite of the fact that the Commission had upheld the validity of the woman suffrage law and had been substantiated in its action by the courts, the members of the Commission shortly became convinced that the existence of woman suffrage was a severe handicap to the accomplishment of its mission. In its first annual report, 1882, it recommended that Congress repeal the Utah statute conferring voting rights

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[1] Salt Lake Tribune, September 15, 1882.

[2] Ibid. [3] U. C. Minutes, A, 96.

[4] Compiled Laws of Utah, I (1888), 44.

on women,[1] and drafted a bill for Congress to effect its recommendation.[2] Similar recommendations were made in subsequent reports, until by the passage of the Edmunds-Tucker Act woman suffrage in Utah was annulled. The effect of that measure on voting in Utah is analyzed in chapter five. After the imposition of the Edmunds-Tucker law, women remained disfranchised in Utah until statehood in 1896.[3] One serious controversy with respect to the right of women to vote occurred in 1895, prior to the election for ratification of the Utah Constitution. The provisions of the Edmunds-Tucker Act, disfranchising women, were still in effect; furthermore, the Enabling Act passed by Congress, July 16, 1894, provided that: "all male citizens of the United States over the age of twenty-one years" who had resided in the Territory for one year next preceding the election were authorized to vote to select delegates to the Constitutional Convention.[4] These two provisions were cited as argument that women had no right to vote on the Constitution. However, since the proposed constitution provided for female suffrage, the argument was

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[1] Mess. and Docs., Int. Dept., II, (1882-3), 1007.

[2] U. C. Minutes, A, 155.

[3] Ralph Jack, "A Study of Woman Suffrage in Utah," (Unpublished Master's thesis, Dept. of History, Brigham Young University, Provo, Utah, 1954).

[4] Utah Code Annotated, I (1943), 53.

made that women certainly should be entitled to vote on the acceptance or rejection of that document. The problem was presented to the Utah Commission, which, after hearing conflicting opinions from leading legal authorities of the Territory decided, July 13, to avoid any responsibility by leaving the question to the decisions of the individual registration agents.[1] This action was in full conformity with the theory of the Murphy v. Ramsey case. However, the possibility of approximately four hundred registrars making different decisions must have seemed to present a more formidable possibility than the acceptance of responsibility for the decision by the Commission. Therefore, on July 19, the Commission advised the registrars that they should enroll everyone, regardless of sex, who might be eligible to vote under the provisions of the proposed Constitution.[2] This action was also taken out of an abundance of caution. The Commission had been advised that the question was to be appealed to the courts; therefore, to make administrative arrangements to meet the possibility that the court would uphold the right of women to vote, and that such decision might not come until after the close of the registration period, the Commission decided that all women should be registered. In the event that the court decided against the right of such class to vote, then their

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[1] U. C. Minutes, G, 214. [2] Ibid., p. 219.

names could easily be stricken from the records. For this bit of administrative prudence the Commission should be complimented, and for a time it seemed that it might "save the day," for on August 10, in the case of Anderson v. Tyree in the First District Court in Ogden, the right of women to vote was upheld.[1] That case sought a writ of mandate in behalf of Sarah E. Anderson to compel Charles Tyree, a deputy registrar for the Second Precinct of Ogden, to place her name on the voting list of said precinct, said officer having refused to do so upon her application to be registered. The Court granted the writ, concluding that "the Constitution should determine what voting qualifications shall be." The decision was immediately appealed to the Territorial Supreme Court, which on August 31, overruled the District Court and decided that women did not have the right to vote.[2] Chief Justice Merritt, speaking for the majority of the Court, stated that he found no evidence that the anti-woman suffrage provisions of the Edmunds-Tucker law had been repealed. On the contrary, evidence as contained in the Enabling Act supported the interpretation that Congress intended only males to vote. Prohibitions of the Edmunds-Tucker law, therefore, must continue in force until the provisions of Utah's new Constitution became operative.

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[1] Salt Lake Tribune, August 11, 1895.

[2] Anderson v. Tyree, 12 Utah Reports 129, (1893).

Associate Justice William H. King dissented vigorously. The Commission was obliged, therefore, to instruct its registrars to delete the names of all women on the registration rolls since they were prohibited from voting.

Part VI--The Utah Commission and Amnesty

Section six of the Edmunds Act provided:

> That the President is hereby authorized to grant amnesty to such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation, before the passage of this act, on such conditions and under such limitations as he shall think proper; but no such amnesty shall have effect unless the conditions thereof shall be complied with.

That provision remained a "dead letter" in the law until the issuance of the "Manifesto" in 1890. The abandonment of polygamy by the Church created the practical possibility of its issuance. However, not until sufficient additional evidence of the sincerity of the Church had been compiled and other events had transpired was amnesty granted. The historical events leading to the issuance of amnesty need concern us here only in so far as the Utah Commission participated.[1] In its report dated September 15, 1892, the Commission noted that on December 19, 1891 the First Presidency and apostles of the Church of Jesus Christ of Latter-day Saints had addressed an appeal to the President of the United States, praying "that

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[1]B. H. Roberts, Comprehensive History of the Church (Salt Lake City, Utah: Deseret News Press, 1930), VI, 288-90 contains a good summary of these events.

full amnesty may be extended to all who are under disabilities because of the operation of the so-called Edmunds and Edmunds-Tucker laws.[1] The Church petition told President Harrison that the leaders of the Church in the past had taught the people that polygamy was right and that it was necessary to man's highest exaltation in life to come, but that such teachings had stopped a short time prior to September of 1890, the date of the issuance of the manifesto by President Wilford Woodruff. That document had been issued by President Woodruff only after crying to God in "anguish and prayer," and receiving the permission to advise the members of the Church that the law commanding polygamy was henceforth suspended. The petition further informed the President that the Manifesto had been accepted by the people of the Church in the "most solemn manner" and that the people had been faithful to their covenant. Then noting that "our people are scattered, homes are made desolate, many are still in prison, others are banished or in hiding," the petition expressed the plea of the First presidency and the Quorum of the Twelve for relief in the concluding sentence, "As shepherds of a patient and suffering people we ask amnesty for them and pledge our faith and honor for their future."[2] Although the petition had been submitted in December of 1891, no public action thereon had been taken

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[1] Mess. and Docs., Int. Dept., III (1892-3), 466.

[2] Ibid., p. 465.

by President Harrison prior to the Commission's 1892 report, which told him that "without assenting to all the assertions of this appeal the Commission would be glad if the relief prayed for could be granted," for it regarded the petition as "the most important of the documents the church has issued."[1] On January 4, 1893, less than four months following the Commission's recommendation, President Harrison issued his proclamation.[2] That document granted "a full amnesty and pardon to all persons liable to the penalties" of the Edmunds and the Edmunds-Tucker Acts "by reason of unlawful cohabitation under the color of polygamous or plural marriage who have since November 1, 1890, abstained from such unlawful cohabitation." It is significant to note that the President's proclamation stated that a major reason for its issuance was the favorable recommendation of the Utah Commission, and cited no other bodies as having so recommended. This would imply that the advice of the Commission had exercised a potent influence in the issuance of this historic document.

While the Commission had favored the granting of amnesty, it probably would have worded that grant more specifically than was done in the version issued, the terms of which left the Commission very much confused as to its effect upon the right to vote of those previously disfranchised by the

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[1] Ibid.

[2] Messages and Papers of the Presidents, XIII, 5803-4. A copy is included in the appendix.

Edmunds law. The fundamental question was whether the amnesty restored the right of that class to vote or not. The confusion resulted from the phrase which granted amnesty to those "liable to the penalties" of the law. Was disfranchisement for polygamous living a "penalty" or was it merely an electoral regulation? Finding a lack of agreement among the members of the Commission, and a similar divergence of viewpoint among the lawyers of the Territory, the Commission requested, June 19, 1893, an opinion from the Attorney General of the United States.[1] After waiting nearly a month without receiving a reply, the Commission telegraphed the Secretary of the Interior requesting him to attempt to secure from the Attorney General an immediate answer.[2] On July 17, the Secretary replied that the Attorney General had "declined to render an opinion . . . having no authority to advise the Commission in exercise of duties of their office."[3] This interesting refusal opens up a wide area of speculation as to the reasons for it, for certainly the Commission's request was for legal interpretation of a public document not for a definition of the methods of operation of the Commission. Regardless of the reasoning used by the Attorney General, his refusal left the Commission with no resources but its own upon which to rely for a decision. Legal opinion was requested from leading attorneys of Utah, but that opinion was about equally divided.[4]

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[1] U. C. Minutes, F, 4. [2] Ibid., p. 43. [3] Ibid. [4] Ibid.

The Commission, therefore, decided the question for itself, but not without division. Commissioners Godfrey and Lett maintained that the proclamation legally restored full franchise privileges, but Commissioners Robertson, Williams, and McClernand were of the opinion that "strictly from a legal viewpoint . . . the deprivation of the voting privilege is merely an Electoral Regulation . . . and not a penalty or punishment for crime." They maintained, therefore, that the Amnesty Proclamation did not without further legislation restore the privilege of voting to those disfranchised. However, in view of the fact that legal opinion was so divided on the question they agreed that doubt should be resolved on the side of liberality, and joined their fellows in issuing a circular which informed the registrars that it was the opinion of the Commission that "any person in the Territory otherwise qualified to vote and who has abstained from commiting any of the forbidden sexual offenses since November 1, 1890 ought to be permitted to register."[1] The registrars were left to make such adjustments in the oath as they thought necessary to assure the registration of only those eligible.

On September 17, 1894, due to the fact that many of the persons amnestied were not taking the Edmunds-Tucker oath, because of the provision which required the registrant to swear that he had not been convicted of unlawful cohabitation,

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[1] Ibid.

the Commission advised the registrars that the provisions should be altered to read, "that I have not been convicted of any crime . . . for which I have not been pardoned or amnestied."[1] This instruction had hardly been issued, however, when the Commission received, September 27, 1894, a telegram from the Secretary of the Interior informing them of the provisions of the Amnesty Proclamation of President Grover Cleveland.[2] That document was a little more specifically worded than its predecessor and granted a "full amnesty and pardon to all persons who have, in violation of said acts, committed either of the offenses of polygamy, bigamy, adultery or unlawful cohabitation, under the color of polygamous or plural marriage" or who "are now suffering deprivation of civil rights in consequence of same."[3] There remained, therefore, no question but that full franchise was to be restored to those whose disfranchisement had been the basic mission of the Utah Commission. Immediately the Commission informed the registrars of President Cleveland's action and instructed them to eliminate the part of the oath which required registrants to swear that they had "not been convicted of the crime of bigamy, polygamy, unlawful cohabitation, incest, adultery or fornication."[4]

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[1] Ibid., G, 57. [2] Ibid., p. 58.

[3] Messages and Papers of the Presidents, XIII, 5942-3. A copy of the Amnesty Proclamation of President Cleveland is included in the Appendix.

[4] U. C. Minutes, G, 59.

It is interesting to observe that conditions in Utah had so changed in twelve years that the Commission, which had been sent to Utah with its major function, that of disfranchising polygamists, played a major role in securing the re-establishment of their right of franchise. Where the Commission had pointed with pride in 1882 that it had disfranchised approximately 12,000 polygamists, it now seemed equally pleased that it had participated in restoring these to full political rights.

CHAPTER V

ELECTION PROCEDURES, VOTING AND CANVASSING

Part I--Election Procedures

Inasmuch as registration was necessary prior to voting, most persons disfranchised under the Edmunds and the Edmunds-Tucker laws were eliminated from the rolls of prospective voters at the time of registration, and few of them attempted to vote. Therefore, the voting process was less contentious than had been the registration.

As it had done in connection with registration, the Utah Commission departed extensively from the Utah law in its rules governing the voting and canvassing procedures. The deviations in the Commission's rules compared with the provision of Utah law are charted in table 9 which follows. Again, the provisions supplanted local control with the Commission's centralized administration. Illustrative of this centralization are the following points: (1) Utah law had made election judges appointable by the county court--the rules of the Commission required that they be appointed by the Commission upon the recommendation of its appointee, the county registrar, (2) hearings on any challenges as to the right of any registered voter to vote were, by Utah law, to be heard and decided by the local senior justice of the peace

TABLE 9

COMPARATIVE ELECTION RULES IN UTAH
FOR YEARS INDICATED*

	1878	1882	1887
General supervision of registration ...	None	Utah Commission	Utah Commission
Person acting as county registration officer	County assessor (ex-officio)	Appointee of Utah Commission	Same as 1882
Precinct registrars (deputy registrars)	Appointed by county assessor	Appointed by Utah Commission on recommendation of county registrar	Same as 1882
Method of registration	Registration officer visited every home to register qualified persons. Also held registration days at registration office.	Same as 1878	Same as 1882
Oath required of registration officers and election judges	That they will well and faithfully perform all duties of office to best of their ability, to avoid fraud, deceit, etc.	That they will "support the Constitution of the United States, and will faithfully and impartially perform the duties of the office and that they were not bigamists or polygamists."	Same as 1882

TABLE 9—Continued

Oath required of voters	See p. 82.	See p. 87.	See p. 108.
Election judges	Three capable, discreet persons appointed by county court. At least one from minority party at last election if such party functioned in district concerned.	Same except appointed by Utah Commission on recommendation of county registrar who was required to submit three from each precinct.	Same as 1882
Suffrage requirements	Male citizen over 21 years of age, female citizen, or any woman who is the "wife widow, or the daughter of a native born or naturalized citizen of the United States, over 21 years of age. Resident of Territory six months. Precinct one month. Taxpayer.	Same as 1878 with the exception that polygamists or those unlawfully cohabiting with more than one woman could not vote.	Same as 1882, except no women could vote.
Form of ballot	Each elector provided his own ballot which could be written or printed. Voter designated persons and offices voted.	Same as 1878	Same as 1882

Method of voting ...	Each voter placed his ballot in an unmarked envelope, of uniform shape and color provided by county court, and presented it to presiding judge of election who deposited it without any mark whatever being placed on such envelopes. Judge of election wrote opposite his name "voted."
Official designated to hear challenges to right of any person to vote	Senior justice of peace in precinct concerned
Counting votes	Counted by judges of election who forwarded certified tally lists with ballot box and ballots to clerk of county court.
Canvassing board ...	County clerk and at least one member of county court for county and precinct offices. As provided by city law for municipal elections. Secretary of Territory in presence of Governor for territorial offices.

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Same as 1878, except envelopes supplied by Utah Commission.	Same as 1882
Judges of election as appointed by Commission	Same as 1882
Counted by election judges. Tally sheets forwarded to Utah Commission. Ballots and ballot boxes to clerk of county court.	Same as 1882
Votes counted by judges of election and totals sent to Utah Commission. Canvass by five man board appointed by Utah Commission. Votes for members of Territorial Legislature canvassed by Utah Commission itself. In case of contested election votes in sealed ballot boxes were forwarded to Utah Commission for recount.	Same as 1882

TABLE 9—Continued

Issuance of certificates of election .	For county and precinct offices—the county clerk. For territorial offices—the Governor of Territory.	The Utah Commission for all offices.	Same as 1882
Election supplies ..	County court	Utah Commission	Same as 1882
Pay of personnel ...	Assessors and deputies received such pay as determined by county court. Judges of election received $3 per day and 30 cents per hour for canvassing votes.	County registrars received $4, deputies $3 (except where great distances demanded an increase.) Judges of election received $3 per day and 30 cents per hour for counting votes. Central canvassing board received $7 per day.	Same as 1882

*Sources: Summarized from Compiled Laws of Utah, 1888, and Utah Commission Minutes, 1882 and 1887.

in the precinct concerned. The Commission provided that such hearings and determinations would be made by its own appointees, the election judges, (3) election supplies, which previously had been supplied by the county court were now supplied by the Commission, (4) votes previously counted by locally appointed election judges were to be counted by the Commission appointed election judges, (5) canvass of elections for all local offices, which had previously been performed by the county clerk and one member of the county court, were now to be canvassed by a central canvassing board appointed by the Commissioners, or in the instance of elections for the Legislative Assembly the Utah Commission itself, (6) certificates of election, previously issued by county clerks for all local offices and by the Governor for all offices covering more than a county, were now to be issued by the Commission itself or its appointed canvassing board. An analysis of the procedures followed by the Commission in carrying out its rules, and the effect of such rules on the extent of voting in Utah and the outcome of elections follows.

Appointment of judges of election.--The first rules issued by the Commission, in 1882, covering the appointment of judges of election, followed the provision of existing Utah law, which required that the election judges be "three capable and discreet persons . . . one at least of whom shall be of the political party that was in the minority at the

last previous election, if such party there be in the precinct."[1] However, the method of appointment of the judges, as required by the Edmunds Act, was entirely different from that provided in Utah law--the Utah Commission, instead of the county court, being designated the appointing agency. To secure the necessary judges, the Commission advised the county registrars to submit the names of three suitable persons.[2] On September 21, 1882, the Commission decided that it needed a wider range of names from which to select and so adopted and circulated to all county registration officers an order which required each such officer "to send to the Secretary a list of six proper and eligible persons for each precinct, three of whom shall belong to each party, from whom the Commission may select the three judges of election for each precinct . . . the registration officer to designate the party to which each person on the list belongs."[3] From the list submitted, the Commission selected the judges. The 1883 rules, however, which were adopted as the permanent rules of election, provided only that the registration officer submit the names of three proper and eligible persons.

The fact that the rule stated that each polling place would have three judges, "at least one of whom must be of the

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[1] Compiled Laws of Utah, I (1888), 321.

[2] U. C. Minutes, A, 15-38. [3] Ibid., p. 68.

minority party," did not mean that only one would come from that party. In fact, in most instances two Liberals and one People's Party member composed the board. At times the entire set of judges was alleged to be Liberal.[1] Deviations from this policy were noted in areas where qualified appointees were not available from the Liberal Party. In spite of frequent protests, this practice of giving the minority party a majority of the election judges continued until 1892 when selection was made on the basis of national parties.[2] Repeated attempts by minority members of the Commission, particularly Commissioner McClernand, to secure its modification, met with defeat.[3]

The process of appointment of judges of election, following their selection by the Commission, was simple, requiring only that they execute an oath that "they would well and faithfully perform the duties of the office, and that they were not bigamists or polygamists." Each was to send his oath immediately to the Commission as evidence that he had accepted the office. This method of appointment made available to the county registrar an opportunity to exercise extensive control over the elections through the appointment of the election judges. It also assigned him a substantial amount of patronage which might be used for political ends. The degree to which

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[1] Ibid., E, 78, 184. [2] Ibid., pp. 185, 285.

[3] Ibid., B, 468 and C, 24.

this power was exercised, either to fraudulently control the outcome of elections or to strengthen the Liberal cause, is impossible to accurately assess. Instances in which vigorous protests were made as to fraud will be commented upon subsequently.

Number of election judges appointed.--The number of election judges appointed by the Commission is indicated in table 10 below.

TABLE 10

NO. OF PRECINCT JUDGES OF ELECTION APPOINTED (EXCLUSIVE OF CITY ELECTIONS)*

Year	No. of Judges
1882	699
1883	747
1884	784
1885	780
1886	800
1887	1,056[a]
1888	1,124
1889	1,284
1890	1,148
1891	1,109
1892	1,159
1893	1,172
1894	1,140
1895	1,589[a]
Total	14,591
Average	1,068

*Source: Utah Commission Minutes.

[a]Estimates--accurate figures not available.

If the number of judges for municipal elections were added, the total number of election judges appointed by the Commission during its administration would surpass twenty thousand--a sizable personnel function.

Supervision of election judges.--The fact that judges of election were appointed to hold office for one year, or at the pleasure of the Commission, retained for the Commission a strong supervisory tool in relation to the judges of election. However, the records of the Commission indicate no major struggle in relation to the operation of the voting process. Apparently it experienced no troubles similar to those encountered in connection with registration. The fact that the registration process handled most of the controversial cases, as well as the fact that the election board was bi-partisan, contributed to the lack of controversy. Such disputations as did take place usually concerned themselves with the process of counting and canvassing the votes rather than with the process of casting the ballots.[1]

Election procedure.--With respect to the procedure of the election, the rules provided that challenges could be made by any qualified voter and that such challenges were to be heard and decided by the judges of election. Voters, upon being found to have been properly registered and upon the

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[1]An account of the problems encountered in canvassing the election is covered in part III of this chapter.

resolution in their favor of any challenges, were to proceed to vote by indicating on a ballot, either written or printed, their choice for offices concerned. This ballot was then to be neatly folded and placed in an unmarked envelope provided by the election authority for that purpose, and placed in the ballot box without any extraneous marking whatsoever being placed on either the ballot or envelope. After completion of the voting process, the judge of election wrote "voted" opposite the name of the voter involved. This procedure, with the exception of hearing of challenges, followed faithfully the provisions of Utah law on the subject.

Part II--The Effect of the Commission's Administration on Voting

The effect on voting of the provisions of the Edmunds law, as administered by the Utah Commission, was somewhat surprising in view of the intent of the framers of that law. Instead of weakening Mormon political control throughout the entire Territory, it strengthened it,[1] at least for several years; and instead of decreasing voting by the disfranchisement of polygamists, it resulted in a net increase in votes cast. This outcome is partially explained by the fact that prior to the arrival of the Commission political conditions in Utah were so dominated by the Mormons and the People's

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[1]It should be noted, of course, that polygamists were restricted from voting or office holding.

Party that interest in political activity and voting lagged. However, the passage of the Edmunds law and the institution of the Utah Commission served as a stimulus to the political activity of both parties. The heretofore minority Liberal Party became more active in the hope of some political success. The Mormon People's Party, its dominance threatened by the Edmunds Act and the Utah Commission, became more aggressive to protect its position.

Effect of Edmunds law on voting for territorial delegate.--The effect of the Edmunds law on territory wide voting is best illustrated by an analysis of election returns for delegate to Congress and a comparison of the total votes cast, prior to the institution of the Utah Commission and after, as shown in table 11 which follows. The period 1870 through 1880 was characterized by control of elections at the local level, with a solid dominance of registration and election personnel by the Mormons. From 1882 through 1886 the provisions of the Edmunds law were in force. From 1887 through 1890 the Edmunds-Tucker law, with its provision disfranchising all women, was operative. Figures from 1892 through 1896 are not shown because following the division of Utah's voters on national party lines in 1891, election returns were on such a different basis that figures are not comparable.

It is interesting to note that in the last three delegate elections prior to the administration of the Utah

TABLE 11

SUMMARY OF DELEGATE ELECTION RETURNS
TERRITORY OF UTAH--1870-90*

Year	Liberal Party Candidate	Vote	People's Party Candidate	Vote	People's Party Majority	Total Vote
1870	Geo. R. Maxwell	1,469	William H. Hooper ...	21,626	20,157	23,095
1872	Geo. R. Maxwell	1,238	George Q. Cannon	21,970	20,732	23,208
1874	Robert N. Baskin ...	1,598	George Q. Cannon	24,365	23,767	25,963
1876	Robert N. Baskin ...	3,608	George Q. Cannon	20,868	17,252	24,468
1878	No candidate	57	George Q. Cannon	14,901	14,844	14,958
1880	Allen G. Campbell ..	1,357	George Q. Cannon	18,567	17,210	19,924
....	.....	.....	....Edmunds Act	.....	.....	.....
1882	Philip T. Van Zile .	4,884	John T. Caine	23,039	19,155	27,823
1884	Ransford Smith	2,215	John T. Caine	21,120	18,905	23,335
1886	Wm. M. Ferry	2,810	John T. Caine	19,605	16,795	22,415
....	.....	.....	...Edmunds-Tucker Act	.....	.....	.....
1888	Robert N. Baskin ...	3,484	John T. Caine	10,127	6,643	13,611
1890	C. C. Goodwin	6,912	John T. Caine	16,353	9,441	23,265

*Source: Compiled from Utah Commission Minutes.

Commission that the total vote ranged from a high of 24,468 in 1876 to a low of 14,958 in the 1878 election, with an average of 19,783 votes cast. In the three elections following the Edmunds law, the total votes ranged from a high of 27,823 in 1882 to a low of 22,415 in 1886, or an average of 24,524--an increase of 4,741 in average number of votes cast. Some of this increase might be attributed to population growth, but most of it was accounted for by greater political activity as indicated by the fact that the highest vote totals occurred in 1876 and 1882 respectively, which dates bear little relation to a steady population growth which was occurring throughout the entire period.[1] Even more interesting than total votes cast is an analysis of the effect of the Edmunds law on the majorities received for the Mormon candidate. Again, using the three elections prior to the passage of the Edmunds Act and the three elections following as a basis for comparison, it will be noted that from 1876 through 1880 the majority for the Mormon candidate varied from 14,844 to 17,252, for an average majority of 16,435. The three delegate elections occurring in 1882, 1884, and 1886, gave majorities to the Mormon candidate ranging from 16,795 to 19,155, with an average majority of 18,285. Thus, under the Edmunds law, the People's Party candidate secured an increase in average majority of

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[1] Compendium Eleventh U. S. Census shows Utah's population as follows: 1870, 86,786; 1880, 143,963; 1890, 207,905.

3,441 votes, this in spite of the disfranchisement of approximately 12,000 polygamists, most of whom were of voting age and if permitted to vote would have voted for the candidate of the People's Party. It is also interesting to note that the number of votes cast for the Liberal candidates in the same elections increased from an average of 1,674 votes, for the three elections prior to the advent of the Utah Commission, to an average of 3,303, for the three elections administered by that body under the Edmunds law. The largest vote polled by the Liberals was 4,884, in the 1882 election, the first administered by the Commission. The fact that this total represented less than one-fifth of the 23,039 totalled by the People's Party was a source of great discouragement to the Liberals; and thereafter, until the passage of the Edmunds-Tucker Act their political activity again receded to a low level. However, it is significant to observe that in the 1882 election, when the Liberals polled the highest total of votes received at any of the three elections under the Edmunds law, the People's Party achieved its greatest majority during the same period. The reduction in total vote, as well as the reduction in the majority achieved by the People's Party candidate in the 1884 and 1886 elections, is accounted for by two factors: (1) the Liberals were politically discouraged after their harsh defeat in the 1882 election,[1] and (2) the

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[1] Mess. and Docs., Int. Dept., III (1883-4), 503.

assurance of political dominance that came to the People's Party as a result of their overwhelming vistory in the 1882 election, combined with the Liberal lethargy, resulted in decreased political activity of that party with consequent reduction in total vote cast as well as majority received. The low level of interest in voting is further illustrated by a comparison of the number registered with the number of votes cast as shown in table 12 below.

TABLE 12

COMPARISON OF REGISTERED VOTERS AND VOTES CAST 1882-86*

Year	Registered	Voted	Percentage of Those Registered Who Voted
1882	33,266	27,923	84%
1884	41,858	23,335	56%
1886	45,375	22,415	49%

*Source: Mess. and Docs., Int. Dept. for years indicated.

In analyzing these figures it should be remembered that the number of registrations was no indication of political interest. The registrars visited the homes of voters to accomplish the registration; therefore, that process required no interest on the part of the voter. The fact that eighty-four percent of all registered voters cast ballots in 1882 illustrates the interest taken in the first election under

the supervision of the Utah Commission. The contrast between that percentage and percentages shown for 1884 and 1886 elections illustrates the decrease in voter interest following the People's Party victory in 1882. This attitude continued until the passage of the Edmunds-Tucker Act in 1887.

Effect of the Edmunds-Tucker Act on delegate elections.--The Edmunds-Tucker Act again stimulated political interest, but due to the fact that it disfranchised all women, resulted in a considerably decreased total vote, as well as a decreased Mormon majority. Further reference to table 11 shows that the decrease in total votes cast in the election in 1886, at which women could vote, and the one in 1888 at which they could not, was from 22,415 to 13,611, or a net loss of 8,804 votes, or approximately forty percent. This figure is somewhat less than the proportionate percentage of female voting population as indicated in the 1880 census.[1] That report showed that of a total population of 61,539 over the age of twenty-one years, 32,773 were male and 28,766, or forty-seven percent, were female. Assuming that population increases from 1880 to 1887 were made in the same relative proportions, the drop in total vote is less than the proportionate share of female voters. The differential may again be accounted for by an increase in political activity upon the part of the male population in both parties--activity

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[1] Compendium Tenth U. S. Census, p. 664.

which enabled the male members of the People's Party, in spite of the loss of at least forty-seven percent of that party's potential voting strength to maintain a substantial majority, and activity on the part of the Liberals which allowed them to make a substantial net increase in total votes cast.

It is interesting to note, however, that although all women, both Gentile and Mormon were disfranchised, the total reduction in voting is shown in the column of the Mormon People's Party. This may be explained by two factors: (1)that in Utah the Mormon population contained a much larger percentage of women than did the non-Mormon population, and (2) the passage of the Edmunds-Tucker law gave the Liberals a real hope of success with its attendant great stimulus to political activity and voting. Factors of population increase also had an effect upon the total vote cast.

Figures used for comparison up to this point have been totals for the entire territory. Conclusions from such comparisons are subject to the criticism that they do not represent a true mirror of the effect of the Edmunds and Edmunds-Tucker laws because they show only total territorial returns and do not reflect major deviations in voting behavior which might have occurred in certain sections or counties of the territory. An analysis, therefore, of returns by county of delegate elections, as shown in the following

table on pages 157-8, will be illuminating. Comparison of returns for the 1880 delegate election and those of the 1882, which was held immediately after the arrival of the Utah Commission, again shows that the stimulation to voting was extensive and rather uniform throughout all counties of the territory. With the exception of one county, Iron, the total vote cast was greater in 1882 than 1880. The increased voting was reflected in both parties. All counties show an increase in the Liberal vote, and all except Iron, Kane, Rich, Sanpete, Tooele and Washington show an increase for the People's Party. However, immediately after the 1882 election the voting slump set in, and 1884 and 1886 show a consistent decrease in vote cast, with the decrease being rather evenly spread throughout the counties.

Analysis of the effect of the Edmunds-Tucker law on the county by county votings shows that not only was the Mormon vote cut from 19,605 in 1886 to 10,127 in 1888, a decrease of 9,478, but that this decrease was reflected in the totals from every county in Utah. On the contrary, the Liberal totals show an increase in total vote from 2,810 in 1886 to 3,484 in 1888, for a net increase of 674. Furthermore, this increase is spread throughout sixteen of twenty-four counties. Only Beaver, Box Elder, Sevier, Wasatch, Washington and Weber counties showed Liberal losses, while Kane and San Juan showed no change--the Liberals receiving no votes in either county

TABLE 13

ELECTION RETURNS--DELEGATE TO CONGRESS--
TERRITORY OF UTAH 1882-90*

Delegate to Congress	1880		1882	
	George Q. Cannon	Allen G. Campbell	John T. Caine	Philip T. Van Zile
	Peoples	Liberal	Peoples	Liberal
Beaver	515	222	542	286
Box Elder	855	73	945	162
Cache	1,787	6	2,226	80
Davis	850	26	944	105
Emery	.....	.....	249	15
Garfield	Created county in 1882		237	5
Iron	491	4	432	22
Juab	421	49	538	73
Kane	607	.....	185	1
Millard	510	34	575	45
Morgan	231	8	305	36
Piute	105	26	176	69
Rich	207	.....	204	4
San Juan	.....	.....	.....	.....
Salt Lake	3,383	343	5,003	1,648
Sanpete	1,673	43	1,671	123
Sevier	568	5	633	52
Summit	433	175	683	684
Tooele	614	80	587	107
Uintah	6	.....	99	21
Utah	2,737	64	3,403	278
Wasatch	213	7	464	8
Washington	713	176	698	219
Weber	1,699	116	2,240	841
Totals	18,568	1,357	23,039	4,884

TABLE 13--Continued

1884		1886		1888		1890	
John T. Caine	Ransford Smith	John T. Caine	Wm. M. Ferry	John T. Caine	Robert N. Baskin	John T. Caine	C. C. Goodwin
Peoples	Liberal	Peoples	Liberal	Peoples	Liberal	Peoples	Liberal
473	154	419	127	366	64	304	77
800	123	682	110	174	76	624	139
1,936	23	1,795	25	904	87	1,415	123
874	64	792	44	341	55	651	75
382	23	403	41	221	49	392	86
196	0	113	2	104	8	216	24
369	12	376	8	171	14	285	15
500	32	501	92	258	146	459	242
164	2	134	0	92	0	139	0
488	22	617	30	224	48	400	40
274	12	244	16	127	21	211	29
212	34	198	17	116	28	270	65
187	1	164	5	105	8	160	25
.....	.....	.....	.....	14	0	25	0
4,226	613	3,962	619	2,099	1,189	3,515	3,092
1,655	48	1,665	122	914	128	1,276	174
628	52	657	607	325	65	499	93
668	234	647	674	309	717	408	1,001
496	63	472	86	275	100	323	103
89	9	90	2	32	18	173	25
3,146	121	2,550	204	1,458	254	2,364	457
469	2	304	5	190	5	369	17
670	50	678	50	363	16	388	19
2,218	520	2,142	464	945	388	1,482	943
21,120	2,215	19,605	2,810	10,127	3,484	16,353	6,912

*Sources: Deseret News Weekly, Dec. 22, 1880; Utah Commission Minutes.

at either election. Considering that the 1888 contest was a spirited one, these figures highlight the fact that the non-Mormon population possessed a smaller percentage of women, and that the Liberals were much encouraged by the passage of the Edmunds-Tucker Act and were sufficiently hopeful of victory that a large percentage of eligible Liberal electors cast their ballots. The members of the People's Party, however, after losing approximately half of its voting strength could not recover, even through vigorous effort, sufficient additional votes to compensate for the women whose franchise had been lost.

These analyses would seem to justify a conclusion that, so far as voting for delegate was concerned, the Utah Commission did little under the Edmunds law to weaken the Mormon majority. So it becomes obvious why the Commission became convinced during the period from 1882-5 that additional sanctions were needed to break the political power of the Mormon church. It should be noted, of course, that all polygamists were prohibited from voting or office holding, but the question of whether this took political power out of the hands of that class, many of whom were church leaders, is doubtful.

The possibility still remains, however, that the effect of the Commission's activities was more pronounced than any figures reflecting only the voting for Territorial

delegate might show. It is logical to consider that the Liberals, knowing that they could not muster a majority in the whole Territory, which would be necessary to elect a delegate, were not enthused about those contests. However, such a criticism would not be valid in connection with the Territorial Legislature. That body was composed of members representing small districts, and any major success in breaking the uniform control of the People's Party would be shown in the results of those elections. An analysis of those returns, therefore, merits attention. Further interest is added to such analysis when it is remembered that the Edmunds law made the Utah Commission the sole agency responsible for counting all votes for the Legislative Assembly, canvassing same and issuing certificates of election thereto, which certificates were made the only evidence necessary to hold a seat in that body.

The Utah Commission and voting for the Territorial Assembly--the Edmunds Act.--It is regretted that the author has been unable to locate detailed returns for the 1881 election to the Legislative Assembly. The lack of such figures precludes the comparison of the result of that election with the first legislative election held by the Commission as shown in table 14 which follows. However, it should be noted that the Legislature elected in 1881 was composed entirely of Mormons, many of whom were polygamists. In the twelve

TABLE 14

ELECTION RETURNS—UTAH TERRITORIAL LEGISLATURE 1883-89*

District	Council	1883		1885		1887		1889	
		People's	Liberal	People's	Liberal	People's	Liberal	People's	Liberal
1	Cache and Rich	2,262	0	2,120	0	1,345	39	1,257	181
2	Box Elder and Weber	2,965	3	2,985	0	1,052	52	1,053	181
3	Wasatch, Uintah, Summit, and Morgan	2,068	735	1,801	958	886	335	1,498	1,140
4	Salt Lake, Davis, and Tooele	5,380	77	5,965	499	634	951	754	1,313
5		5,381	77	5,968	505	655	724	779	1,278
6		5,375	1	5,966	595	1,184	55	1,447	514
7		5,378	1	5,955	479	857	591	951	768
8	Utah and Juab	2,881	6	3,345	2	1,522	187	1,677	237
9		2,848	1	3,324	2	1,175	3	1,357	228
10	Sanpete, Sevier, Emery ...	2,363	4	2,884	37	1,447	6	1,236	206
11	Millard, Beaver, Iron, Piute, and Garfield	2,002	198	1,962	145	1,362	158	1,220	170
12	Washington, Kane, and San Juan	936	18	888	23	930	1	813	119

TABLE 14—Continued

District	House of Representatives	1883		1885		1887		1889	
		People's	Liberal	People's	Liberal	People's	Liberal	People's	Liberal
1	Cache and Rich	2,246	0	2,122	0	550	19	564	65
2		2,223	38	2,122	0	617	19	582	50
3	Box Elder	836	0	849	0	409	45	475	90
4	Weber	2,121	1	2,132	0	505	216	721	944
5		2,121	1	2,136	0	677	121	793	179
6	Wasatch and Uintah	473	0	599	0	796	8	765	69
7	Summit	824	716	895	964	336	707	367	902
8	Morgan, Salt Lake, and Davis	5,173	336	5,782	478	431	379	614	441
9		5,169	333	5,784	476	299	181	390	406
10		5,172	333	5,785	477	435	398	500	727
11		5,164	333	5,779	475	760	40	952	313
12		5,174	333	5,783	474	231	317	276	553
13		5,172	332	5,785	471	484	138	501	158
14	Tooele	500	0	510	7	424	481	496	108
15	Utah and Juab	2,850	20	3,345	0	870	103	864	123
16		2,852	15	3,281	0	667	89	806	127
17		2,853	3	3,343	0	657	133	761	152
18		2,813	1	3,334	62	517	6	647	20
19	San Pete, Sevier, and Emery	2,361	70	2,650	217	753	1	616	140
20		2,363	56	2,882	11	696	12	615	89
21	Millard	624	0	646	1	854	75	710	69
22	Beaver and Piute	777	185	762	124	502	81	438	90
23	Iron, San Juan, and Garfield	663	3	586	22	427	0	375	3
24	Washington and Kane	873	6	914	0	550	4	537	16

member upper house, known as the Council, all but two were polygamists and all held official relations to the Mormon church.[1] Three of the members, Lorenzo Snow, Moses Thatcher, and Daniel H. Wells were members of the Quorum of the Twelve, and Joseph F. Smith was Second Counsellor in the First Presidency.[2] Of the twenty-four members of the House, all but six were polygamists and all but four held prominent positions in the Church.[3] Two of the members, John H. Smith and F. M. Lyman, were members of the Quorum of the Twelve.[4] It is safe to assume that the detailed results would show substantial margins for People's Party candidates. It should also be noted that the first legislative election under the direction of the Commission was held in August of 1883, one full year after the Commission had become operative on the Utah scene. This should have given the Commission adequate time to make an impression upon the pattern of Utah voting, if such impression could be made through the exercise of the powers conferred by the Edmunds Act. It is interesting to note, therefore, that in spite of the fact that some twelve thousand members of the People's Party had been disfranchised,

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[1] Salt Lake Tribune, Jan. 1, 1882.

[2] Joseph Fielding Smith, Essentials in Church History (Salt Lake City, Utah: Deseret News Press, 1940), p. 665.

[3] Salt Lake Tribune, Jan. 1, 1882.

[4] Joseph Fielding Smith, op. cit., p. 663.

that following the 1883 election both houses of the Assembly were still solidly Mormon. The major change that had occurred was the elimination of all polygamists.[1] Only one House district, Summit county, showed a close race. The fact that the Liberals, suffering from their defeat in 1882, voted only lightly in this election accounts partially for the continued complete dominance of the legislature by the People's Party. This lack of Liberal interest piqued the Commission sufficiently that it noted in its 1883 report to the Secretary of the Interior that the vote was light and most of the "falling off" was by the Liberal element, a fact to be regretted for it was believed that by proper effort and good management one or more non-Mormons might have been elected to the Legislative Assembly, who would have the opportunity of putting the majority on record."[2] The 1885 election was approached with even greater apathy, and was preceded by a minimum of campaigning. The Liberal Party was active only in scattered areas and in many precincts did not run a candidate for office. This apathetic approach gave no hint of the historic outcome of that election--historic because when Summit county votes were counted the totals indicated that a non-Mormon Liberal, D. C. McLaughlin of Park City, had been elected to the Legislative Assembly.[3]

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[1] Mess. and Docs., Int. Dept., II (1883-4), 503.

[2] Ibid.

[3] U. C. Minutes, B, 163. It is interesting to note that Mr. D. C. McLaughlin had served on the first canvassing Board appointed by the Utah Commission in 1882. (U. C. Minutes, A, 149.)

This was the first time in many years that a major Utah office had been won by a candidate outside the People's Party and caused a sensation in the Territory. The Liberals were jubilant. The People's Party charged fraud.

The Liberal victory at first glance might be interpreted to support either of two points of view: (1) that the work of the Commission in enforcing the Edmunds law was actually undermining the strength of the Mormon People's Party, and the election indicated the success of the Commission's efforts, or (2) that fraud had been practiced in the local election administration and was condoned by the Commission to gain a victory. In support of the first point as to the effectiveness of the Commission's work, it should be pointed out that the Commission had probably expected one of the first Liberal victories at Park City, for that precinct had received special attention. On June 28, 1883, the Commission approved a petition submitted by Mr. Jacob J. Buser, Deputy Registration Officer for Park Precinct, and signed by citizens of that locality, which requested that the number of polling places be increased from one to three. Additional copies of the registration lists were also ordered so that each new polling place might be properly served.[1] The fact that the Commission was interested in making voting as convenient as possible for

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[1] Ibid., A, 196.

the residents of Park City was again illustrated by its action of July 11, 1884, when it ordered the number of polling places in Park City increased to five, with complete registration lists at each.[1] Four polling places were active in the 1885 election.[2] Considering the fact that Park Precinct probably had less than one thousand eligible voters, the number of polling places seemed adequate to give the fullest encouragement to voting.

The fact that the provisions of a large number of polling places within Park City, a heavily Liberal precinct, was not accompanied by a similar increase in the number of polling places within Summit county outside Park City, which county area was dominated by the People's Party, indicates the Commission's predisposition to aid the Liberal cause. This predisposition, by making voting as convenient as possible in Liberal Park precinct, no doubt made a direct contribution to McLaughlin's election. This fact is illustrated by the election returns which showed that in Park precinct McLaughlin received 812 votes to 27 votes for his People's Party opponent, Pack.[3] In the areas of Summit county outside Park precinct, McLaughlin received only 152 votes to 868 for Pack. The final totals showed McLaughlin the victor by a

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[1] Ibid., p. 425. [2] Deseret News, Aug. 21, 1885.

[3] Salt Lake Tribune, Aug. 4, 1885.

count of 964 to 895.[1] The commanding lead he had acquired in Park City accomplished his election, which accomplishment was no doubt somewhat aided by the cooperation of the Commission.

The possibility that fraud was also involved in the election cannot be completely discounted, but neither can it be proved at this late date. The People's Party protested to the Commission McLaughlin's election, based on the allegation that: (1) there were four polling places in Park City, and that the full registration list was posted at each polling place, "thus affording great facilities to repeat," (2) the registration lists contained names of persons who "have died or removed," (3) the precinct registration officer had registered transients to permit them to vote, (4) the election officials had permitted persons to vote for those who were dead or removed, and for absent registrants, and (5) certain persons of the People's Party were denied the privilege of voting while members of the Liberal Party, "similarly circumstanced," were permitted to vote.[2] However, in spite of the vigorous protests lodged by the People's Party, the Commission refused to take any action to investigate the allegations and proceeded to give a certificate of election to McLaughlin,[3] thereby making conclusive judgment on this point difficult at this time due to lack of evidence.

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[1] U. C. Minutes, A, 146-52. [2] Ibid., B, 153-5.

[3] Ibid., p. 153.

However, prior to assuming that either the work of the Commission, through supplying a large number of polling places, or the fraud on the part of the local officials was, either individually or collectively, responsible for the Liberal victory, another factor, that of population growth, must be considered. The 1890 U. S. Census shows that Summit county increased from a population of 4,921 in 1880 to 7,773 in 1890, with Park precinct, composed primarily of Park City, increasing from 1,581 to 3,390 in the same period.[1] Assuming that population growth was constant over the decade reported, by 1885 the population of the county would have increased by 1,426 residents and of Park precinct by 905 residents. Park precinct, therefore, accounted for sixty-three percent of the population increase in the entire county. Inasmuch as Park City was primarily a mining community, with a dominant percentage of Gentile residents, this increase no doubt added substantial voting strength to that element and might well have accomplished the Liberal victory without either the help of the Utah Commission or the perpetration of fraud by local officials. Reference to table 13 shows that as early as the delegate election in 1882 Liberal voting strength in that county was approximately as great as that of the People's Party. Results

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[1] Compendium of the Eleventh Census, I, 43.

of that election in Summit county gave John T. Caine, the candidate of the People's Party 683 votes and Philip T. Van Zile, the Liberal candidate, 684 votes--a majority of one for the Liberal candidate. Inasmuch as that election was preceded by vigorous political activity which succeeded in drawing eighty-four percent of registered voters to the polls, it may be assumed that the returns give a rather accurate picture of the relative voting strengths of the factions concerned. The validity of this conclusion is further substantiated by reference to table 14, pages 161-2. The returns of the 1883 legislative election, which although accompanied by lethargic campaign and voting activity on the part of the Liberals, showed a rather close balance of voting strength in Summit county, with the People's Party candidate winning by a vote of 824 to 716--a narrow majority of 108 out of 1,504 votes cast. It would seem, therefore, that if the outcome of the 1882 delegate election and the 1883 legislative election can be taken as reliable indicators of the relative voting strength of the Liberal and People's Parties in Summit county, that the addition of any substantial number of Liberal voters to the population of that county would certainly have provided a majority of Liberal voting strength. The census figures indicate that such substantial number of Liberals had been added by 1885; and, therefore, the conclusion seems justified that the Liberals could have elected a member of the House without

the necessity of assistance from the Commission or the perpetration of fraud by the local officials.

Summarizing the analysis of the reasons for the first Liberal victory under the Commission's regime, it is probably sound to conclude that the victory was accomplished by a combination of the factors discussed. The increased number of polling places in Park City, by making voting so convenient, no doubt encouraged a full participation in that dominantly Liberal precinct, and the increased Liberal voting strength made the victory possible. While the significance of fraud cannot be accurately assessed, it should be noted that fraud was not necessary to the accomplishment of the victory.[1]

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[1]Durham, in commenting on this first Liberal victory, inaccurately reported both the date and the circumstances: "By this time (1883) the Territorial instrument of the Church in politics had become the People's party, which controlled every seat in the Territorial Legislature. The ninth section of the 1882 act suggested that the Utah Commission do something about this situation. Over the next five years, by disfranchising Mormon voters and gerrymandering the Territory, the Commission vainly tried to elect a 'Liberal' legislator who, if nothing else, might place the majority 'on record.' But notwithstanding the fact that the Mormon majorities at the polls were cut down by disfranchisement, the legislature remained under absolute Mormon control until the general election of 1887, when the People's party, its voting strength cut from nearly 30,000 to 13,395 (votes cast), relinquished one seat in the Council and two in the lower house to the Liberal party, which polled 3,255 votes." See G. Homer Durham, "Political Interpretation of Mormon History," Pacific Historical Review, XIII, No. 2 (June 1944), 144.

Dr. Durham not only failed to note the 1885 Liberal victory but attributed the first Liberal victory to the "gerrymandering" of the Territory by the Commission. This, it is presumed, refers to the redistricting of the Territory under the provisions of the Edmunds-Tucker law. Gerrymandering had

The Edmunds-Tucker Act and the Legislature.--With the passage of the Edmunds-Tucker Act, and the consequent disfranchisement of women, the Liberal victories in the Legislature increased substantially. Two members of the Council and three members of the House were elected in the 1887[1] election and two members of the Council and five members of the House in the 1889 election.[2] These two elections, with their substantial Liberal victories, were aided greatly by the disfranchisement of female voters, which action struck most sharply at the People's Party. The further fact that between the 1885 and 1887 elections the Utah Commission in conjunction with the Territorial Governor and Secretary had redistricted the Legislative districts may also have contributed somewhat to the Liberal victories. The effect of this redistricting cannot be accurately assessed because adequate statistical information upon which to base a judgment is not available. However, the possibility that such reapportionment did not amount to extensive gerrymandering to the disadvantage of the People's Party is evidenced by fact that on March 6, 1888, the

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no part in the 1885 victory. Durham also reports the number of Liberals elected in 1887 as being one in the Council and two in the lower House. Reference to table 14 indicates that two members of the Council and three of the House were Liberals following that election. See also "Report of the Utah Commission," Mess. and Docs., Int. Dept., II (1887), 1333.

[1] Ibid.

[2] Ibid., III (1889-90), 187.

Territorial Assembly, still dominantly controlled by the members of the People's Party, adopted almost verbatim the reapportionment plan which had been devised by the Utah Commission.[1] This action would probably not have been taken had the majority thought it represented a political imposition upon them.

The results of the 1891 legislative election, while presenting interesting figures, is not comparable for purposes of analysis with those legislative elections which preceded it. By the 1891 election the People's Party had disbanded, and party alignment had taken on national characteristics, except for the continued activity of the Liberal Party. Furthermore, the mission of the Commission in respect to the Legislature had changed. The abandonment of the practice of polygamy by the Mormon church had made less urgent the need for non-Mormons in the Legislature.

Part III--Canvassing the Elections and Issuing Certificates

Rules of counting and canvassing.--The rules of the Commission remained uniform on this procedure throughout its administration. They required that immediately following the close of the polls the counting was to be started by the judges of election and was to proceed without adjournment until completed. The ballots were then to be placed back in

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[1] Compiled Laws of Utah, I (1888), 245-9.

the box, which was to be securely locked, sealed, and preserved by the presiding judge for twenty days, to be sent to the Commission upon demand. If not called for within the twenty day period, the ballots were to be destroyed and the box returned to the county court. The tally sheets, containing the totals of the election, were to be sent to the Commission by mail so that results might be canvassed and certificates of election issued.[1] The Territorial Canvassing Board was composed of five men appointed by the Commission and had the responsibility of canvassing and issuing certificates of election for all offices except the legislative assembly. The full responsibility for counting of votes and issuing certificates of election to that body had been assigned, by the Edmunds Act, to the Commission itself. Any protests as to the eligibility of any persons for whom votes were cast were to be presented in writing to the Board, which in turn notified parties concerned and, after hearing, issued its decision.[2] Deviations in this procedure from that prescribed in Utah law are shown in table 9, pages 139-42.

Canvassing problems.--The canvassing board evidently performed well and received the support of the Commission in all its decisions. The fact that it functioned at the Commission's headquarters made communications between the two bodies easy; and, therefore, agreement between the two was

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[1] U. C. Minutes, A, 61-7. [2] Ibid., p. 290.

usually reached before decisions were rendered. This close liason made it unnecessary for the Commission to overrule the canvassing board since the Commission had, in reality, decided the question in the first instance.

The most frequent problem facing the canvassing board was the contest of elections. Starting in 1882, protests were filed intermittently throughout the whole administration of the Commission, as shown in table 15. Three of the items merit comment.

1882.--The 1882 contest developed when candidate Van Zile protested the issuance of a certificate of election to Mr. Caine on the ground that, under Utah law, the canvassing board and the Commission were only authorized to receive the returns from the various precincts of the Territory and make an abstract of the same, which abstract must be sent to the Secretary's office. The Governor and said Secretary were then required to canvass the same, and the certificate of election could only be issued by the Governor of the Territory.[1] The protest was unanimously overruled by the canvassing board,[2] and the certificate issued to Mr. Caine.

This decision was in full conformity with the provisions of section nine of the Edmunds law, which assigned every duty relating to the canvassing of elections and the issuance of certificates to the Utah Commission. Unquestionably, these

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[1] Ibid., p. 148. [2] Ibid., p. 149.

TABLE 15

CONTESTED ELECTIONS—UTAH COMMISSION*

Election Office	Date	Reason for Protest	Commission Action
Delegate	1882	Lack of authority of Commission to canvass and issue certificate. Candidate Caine was a polygamist.	Protest denied unanimously
Legis. Assembly ..	1885	Fraud in Summit county election of D. C. McLaughlin.	Protest denied without investigation
County Recorder ..	1887	Claimed no vacancy existed for office concerned.	Protest denied
County Treasurer .	1887	Claimed no vacancy existed for office concerned.	Protest denied
Legis. Assembly ..	1889	District Attorney asked that no certificate issue to S. R. Thurman elected to Legislative Assembly because he was under indictment for unlawful cohabitation.	Request granted
Justice of Peace in Eureka	1889	Charged miscount of votes, and asked that ballot boxes be brought in and recounted.	Protest denied
Mayor of Provo ...	1889	John E. Booth was charged by Liberal Party with being a polygamist within meaning of law.	Withheld certificate until case could be decided by courts
Various offices in Sanpete, Weber, Salt Lake, Box Elder and Beaver..	1894	Alleged irregularities in counting and returning of votes. Also allegations that Committee Clerk, George Blair, changed names on the records.	Recount prohibited by the courts

*Source: Compiled from Utah Commission Minutes. Years are indicated.

provisions took precedence over the provisions of Utah law, which assigned such functions to the Secretary of the Territory and the Governor.

1885.--The 1885 decision of the canvassing board in the McLaughlin case assured the election of the first Liberal to the Territorial Legislature. It will be rembered that the People's Party had charged that the election had been won by fraud and demanded that the ballot boxes be brought in and the votes recounted. This demand was not acceded to, and Mr. McLaughlin was declared elected. The Commission avoided thereby what it must have considered two undesirable eventualities: (1) the recount might have indicated a majority for the People's Party candidate, thus denying the Commission its first moment of political triumph, or (2) approval for a recount would have been an implied admission that the Commission appointed registrars and judges of election might have committed fraud. This would have reflected not only on the individuals concerned, but on the Commission itself. Furthermore, the Commission's practice of putting complete registration lists at each polling spot would have come in for further criticism. Proof of any such allegations was effectively stopped by the Commission's denial, although unproved charges continued to be published. The Commission was able to extricate itself so easily from this situation by virtue of the provisions of the Edmunds law, which made its certificates of

election to the Legislature the "only evidence of the right of such persons to sit in such assembly."[1] The Commission's actions, therefore, were not appealable to the courts, a fact which no doubt protected the Commission from suit.

1894.--The problems faced in the 1894 canvassing contest were the most complicated, both from the psychological and legal angles, that the Commission met. The composition of the Commission at the time showed a three to two majority of Democrats. It will be remembered that the 1894 election covered the election of delegates to the Constitutional Convention. The voting strength of the two parties was approximately equal, therefore a stiff political fight ensued. On November 8, the Commission received protests from the Central Democratic Committee to the effect that it intended to contest the results in Salt Lake City.[2] Later on, protests with regard to results from Sanpete, Weber, Box Elder, and Beaver counties were also received.[3] The number of contests involved was adequate to change the complexion of the Constitutional Convention; therefore, the decision of the Commission as to whether it would order in the boxes and recount the votes was vital. On December 5, the Commission decided, by a split vote, to open the boxes from Sanpete county and proceed to check the

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[1] Edmunds Act, sec. 9. [2] U. C. Minutes, G. 109.

[3] Ibid., p. 160.

votes against the totals submitted.[1] On December 12, the Commission received a document charging that the ballot boxes in Sanpete had been "insecurely kept since the election" and probably had been tampered with. Protest was made against recounting the votes because of such tampering.[2] By this time suits had been entered in the Third District Court; and the Commission, taking cognizance of the fact that its action would be controlled by the outcome of the suits, decided that it would make no further investigation into any of the contested districts until the court decision was received.[3] During the struggle, allegations were made by Commissioner Tatlock, one of the Republican members of the Board, that certain of the election returns had been tampered with, and changes made thereon, to the benefit of the Democratic Party. In his opinion, the changes were in the handwriting of one George Blair, a clerk of the Utah Commission.[4] The charge created a sensation in the Territory, and immediately a committee of three members of the Commission, two Democrats and one Republican, were appointed to investigate.[5] They announced dates of hearings, but no one appeared to give testimony against Blair--Commissioner Tatlock, himself, apparently refusing to testify.[6] The Committee, as might be expected from

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[1] Ibid., p. 129. [2] Ibid., p. 143. [3] Ibid., p. 183.
[4] Ibid., p. 168. [5] Ibid., p. 173. [6] Ibid., p. 168.

its composition, and the lack of evidence submitted, failed to find adequate proof of the allegations and therefore exonerated Blair.[1]

On January 11, Judge Bartsch, of the Third District Court, handed down his decision. He held that the Commission had no authority to go behind the election returns, expressing his opinion in the following words:

> Nowhere, do I find any authority, either by express provision of statute or by necessary implication, for said Board, in any case whatever, to go behind the returns and open the ballot box for the purpose of canvassing the ballots to declare the result of any election of any candidate for office. This is an assumption of power unauthorized by law. Nor is there any provision of law which authorized the sending of a ballot box to said Board for any such purpose, or for any purpose.[2]

The Commission appealed the case to the Supreme Court, which, after a month's delay, upheld the lower court and ruled that the Commission must issue the certificates of election "on the face of the returns."[3] The Board, having no other alternative, issued certificates to person shown to have been elected by the original returns.[4]

Had the Board been permitted to continue its investigation into the votes, there is little doubt but that the composition of the Constitutional Convention would have been

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[1] Ibid., p. 219.

[2] Mess. and Docs., Int. Dept., III (1895), 604.

[3] Ibid., p. 608. [4] U. C. Minutes, G, 176.

different, and perhaps under Democratic control. In those instances in which the recount had been finished, the Commission found discrepancies which, when corrected, favored the Democratic candidates.[1] Whether or not there would have been a sufficient number of discrepancies to have switched control of the convention to the Democrats is problematical; but since it would have required the seating of only five more Democrats to accomplish the transfer of control, it is likely that the Commission would have found at least that many cases where corrections needed to be made.[2] Whether the Constitutional Convention rightfully should have been Democratic in its control can only be conjectured at this time. However, had the courts not stopped the investigative activities of the Commission, there is little question but that it would have been Democratic.

Surplusage on the ballot.--Another continuing problem which bothered the Commission was the question of surplusage on the ballot. The question first arose before the 1882 delegate election. It will be remembered that George Q. Cannon was denied his seat in the Forty-seventh Congress on the ground that he was a polygamist. As a result, Utah was

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[1] When the Constitutional Convention met, it contained forty-five Democrats and fifty-two Republicans. See Deseret News, March 9, 1895.

[2] U. C. Minutes, G, 133.

without Congressional representation at the time the Utah Commission entered upon its duties. The members of the People's Party were anxious that Mr. Cannon be replaced. Having failed in an attempt to have the Governor call a special election for the office,[1] they turned to the Utah Commission for assistance. On October 20, Mr. John Sharp, representing the People's Party, appeared before the Commission, informed the members that the People's Party had nominated John T. Caine to fill the unexpired term of Mr. Cannon, and requested the Commission's opinion in respect to the following questions: (1) if votes were cast at the November election for a person to fill the vacancy in the office of delegate to the Forty-seventh Congress, from Utah Territory, would such votes be returned to the Commission and canvassed by it? (2) would the Utah Commission issue an informal declaration of the number of votes cast? (3) would the voting for delegate to fill the unexpired term invalidate the ballots concerned?[2]

The Commission decided that no formal canvas of the votes would be made, but that a count of the votes by the judges could be done and that the surplusage on the ballot would not vitiate it.[3] Under this agreement, voters of the People's Party voted for Mr. Caine, who was given a statement

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[1] Whitney, op. cit., III, 239.

[2] U. C. Minutes, A, 97. [3] Ibid., p. 101.

as to the number of votes he received. With this "certificate" Mr. Caine presented his credentials to the Forty-seventh Congress, which admitted him and permitted him to sit in that body until its adjournment.[1]

In 1883, another question of surplusage developed--it grew out of the Mormon-Gentile controversy over the question of whether the offices of Territorial Superintendent of District Schools, Territorial Auditor of Public Accounts, Territorial Treasurer, and Commissioners to locate University Lands, should be elected or appointed.[2] Theoretically, the dispute centered on the interpretation of law; but practically, it was heavy with political overtones, for the control of the important positions concerned was at stake. If the Governor were permitted to make the appointments, then the offices would be under the control of the Gentiles. If filled by election, then the Mormons would control as they had in the past. The legal argument is covered in chapter VI. It will suffice at this point to note that in 1883 the question was presented to the Utah Commission, which after some study decided that the officers concerned should "be appointed by the Governor, with the assent of the Legislative Council," and that the acts of the Legislative Assembly providing for filling those offices by an election of the people were in conflict

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[1] Whitney, op. cit., III, 247.

[2] U. C. Minutes, A, 197.

with said organic act and, therefore, invalid.[1] On July 2, 1883, Mr. John Sharp, as Chairman of the People's Party, again appeared before the Commission and asked whether ballots which contained votes for the disputed offices would be invalidated. After consideration, the Commission determined "that ballots voted at the coming election, containing the names of candidates for other offices than those designated to be filled by the Commission, will be rejected and not counted for any purpose."[2]

This decision was an almost direct reversal of that made in 1882, regarding the delegate election. The only reason for the reversal seems to be that in this instance the Commission itself had handed down a judicial decision regarding the offices concerned and was now supporting that decision by its administrative powers. This ruling amounted to the enactment of a new ballot law, for no provisions supporting it could be found in the then current Utah election laws. Utah law merely provided that each person would provide himself with a ballot--it made no limitations as to what the person could write upon the ballot.

At the election, in spite of the Commission's ruling, some votes were cast for candidates for some of the offices concerned. Attorneys representing Mr. F. A. Mitchell, who

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[1] Ibid., p. 191. [2] Ibid., p. 193.

had received votes for the office of Commissioner to Locate University Lands, and Mr. N. W. Clayton, who had received votes for Territorial Auditor, appeared before the canvassing board and argued that it had "no right to go behind the returns for anything, but were simply to canvas the returns and give certificates to those who had been elected.[1] It was the responsibility of the officials concerned to take steps to secure the offices, if they were opposed. The pleas, however, was denied by the canvassing board, and the decision of that board was upheld by the Commission.[2]

On the 29th of July, 1884, the same question was again presented to the Commission by the People's Party, and again the Commission reversed itself. This time, however, it did it on advice of counsel, having referred the question to District Attorney Dickson. They asked him whether the disputed offices should be elective or appointive, and "if not elective, should the ballot of any elector be rejected and held invalid in toto because it contains, besides the names of candidates for such county and precinct offices, names of persons to fill said territorial offices?[3] Mr. Dickson replied affirmatively to the first question; but on the second he answered in the negative, claiming that surplus votes would have no effect on

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[1] Deseret News, Aug. 24, 1883. [2] Ibid.

[3] Salt Lake Tribune, July 31, 1884.

the valid part of the ballot because "nothing fraudulent could be accomplished by it, nor could anyone be injured by it."[1] With this opinion confronting it, the Commission had little choice other than to again reverse itself and deny the ground it took in 1883. Thereafter, it continued as a settled policy that surplusages on the ballot would not vitiate the remainder thereof. The only other mjaor surplusage problem arose in 1887 in connection with the People's Party sponsored Constitutional Convention. That convention had not been authorized by law, and no legal provision had been made to secure a vote thereon. However, the leaders of the movement were anxious to secure a public vote on the document and asked the Commission if votes cast for or against the constitution would vitiate the ballots containing such votes. The Commission unanimously agreed that such votes would have no effect on the remainder of the ballot.[2] This action paved the way for the vote on the constitution, which was favorable by a ratio of 13,195 to 502.[3] The constitution's effectiveness was limited to its propaganda value, for no Congressional authorization for the drafting of such a document had been given.

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[1] Ibid.

[2] U. C. Minutes, C, 14.

[3] Mess. and Docs., Int. Dept., II (1887), 1336.

Part IV--The Utah Commission and Polygamist Political Control

Senator Edmunds, in speaking of the aims of the Edmunds Act, had stated that the major purpose thereof was to "put the political power of that Territory . . . into the hands of those who are obedient to the law, and not to the hierarchy and the polygamists who are disobedient to it."[1] Therefore, analysis of the success of the Commission in achieving the transfer of political power from the polygamists merits attention. Two phases need consideration: (1) the exclusion of polygamists from the polls and from office, and (2) the effect of that exclusion on the political power of the polygamists, primarily the hierarchy of the Church.

With respect to the exclusion of polygamists from the polls and from office, there can be no question of the success of the Commission. From the date of its first election in 1882, throughout its administration, it repeatedly reiterated the success it had achieved in exclusion of practically all polygamists from either voting or holding office.[2] It estimated the number so excluded to be from twelve to fifteen thousand, but never secured anything more accurate than an "estimate." The question remains, therefore, did such exclusion transfer political power away from the polygamist

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[1] Congressional Record, XIII, Part II, 1156.

[2] Mess. and Docs., Int. Dept., II (1883-4), 501.

hierarchy? The answer is in the negative.

Perhaps the best evidence to substantiate the point that the operation of the Edmunds law and the activity of the Utah Commission never accomplished the removal of political power from the hierarchy of the Mormon church is found in the reports of the Commission itself. That body, anxious to show Congress the good results of its work, was consistently obliged to admit its failure in this regard. In its 1882 report, after having been on the job for only a few months, it optimistically reported that the law had been "a decided success in excluding polygamists from the exercise of suffrage; and . . . the steady enforcement of the law will place polygamy in a condition of gradual extinction."[1] By 1883, the Commission was somewhat less optimistic but still convinced that the Edmunds law would have a major effect on the political power of the polygamists and on the abandonment of polygamy. It reported that "the act must necessarily have a strong influence in that direction. The very existence of the law disfranchising the polygamists must tend to destroy their influence whenever it is understood that this is to be a permanent discrimination."[2] By the close of its activities in 1884, the Commission had lost its optimism and most of its faith in the

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[1] Ibid., II (1882-3), 1007.

[2] Ibid., II (1883-4), 501-2.

efficacy of the Edmunds law to accomplish the purpose intended. The Commission sadly reported that after more than two years labor and experience it must inform the nation that "although the law has been successfully administered in respect to the disfranchisement of polygamists, the effect of the same upon the preaching and practice of polygamy has not been to improve the tone of the former, or materially dimish the latter."[1] It then told Congress that during 1884 there had been a polygamic revival and that "the institution is boldly, defiantly defended and commended . . . and plural marriages are reported to have increased in number.[2]

To test its theory of the increase in plural marriages, it had its registration agents report the number of persons that the agents "might have good reason to believe had gone into polygamy since the passage of the Edmunds Act." The reports of the agents indicated that "196 males and 263 females had entered polygamy since the passage of the law referred to."[3]

The results of its survey, plus its other observations, led the Commission to recommend a long series of measures which it thought Congress should adopt to cope with the Utah situation, concluding with the observation that "it is

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[1] Ibid., II (1884-5), 517-18.

[2] Ibid., p. 518. [3] Ibid.

not unlikely that finally the Federal Government will find it necessary to take into its own hands all civil power in this Territory." Such language is convincing evidence of the Commission's conviction of the failure of its mission under the powers possessed. The continued exercise of political control by the polygamist leaders of the Mormon church was further emphasized in an interview given in Washington, D. C., 1884, by Commission Secretary, Thomas. When queried as to the reason for the extensive and harsh recommendations of the Commission, he replied that the members based their recommendations "on the belief that 2,700 men, who are unable to vote, still control the political situation in Utah and say who shall and who shall not hold office."[1]

By the end of 1885, the Commission was so bleak in regard to the effect of its sanctions that it recommended, in addition to its past suggestions, that the Liberal program of many years be adopted--namely, that Utah be governed by a legislative commission "composed of nine or thirteen members, to be appointed by the President and in whom all legislative authority should be vested." This recommendation grew out of the continued conviction that Utah was still controlled by the polygamist authorities of the Church. The Commission stated its conclusion on this point in these words:

We have been disappointed as far as the action

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[1] Salt Lake Daily Herald, Dec. 28, 1884.

> of the leaders of the Church and the principal part of their following are concerned. The declaration often repeated during the past year by the chief officers of the church, that it is their settled determination to refuse obedience to the law; the persistent use of their great power and influence to defeat all efforts from within as well as from without the church to put an end to polygamy . . . have convinced us that some more decisive plan to reduce the power of the polygamic element, and to correspondingly increase that of the Federal authority in the civil government of Utah, should be presented to Congress at this time for its consideration.
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> . . . It is sufficient answer to the criticism that this plan is unrepublican to say that all of these civil officers are now chosen by the dictation of the church authorities with the view chiefly of strengthening and maintaining the polygamous system there existing.[1]

The 1886 report, like its recent predecessors, was composed in greater part of recommending to Congress the passage of additional legislation to cope with Utah problems. This continued insistance on the need for additional legislation is rather conclusive evidence that the Commission did not feel that its existing powers or past performances had been adequate to make a substantial contribution to the break-up of either the political power of the polygamists or the institution of polygamy itself. In urging Congress to enact more severe laws for Utah, the Commission stated that it wishes "to impress upon the Government and the people of the United States the magnitude of the evil with which we have to contend, and the difficulties in the application of a remedy.

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[1] Mess. and Docs., Int. Dept., II (1885-6), 889-90.

Difficulties increased by the "oneness" of the Mormon people and their solidarity in support of their leaders.[1]

Thus, it appears that after nearly five years of successful enforcement of the disfranchisement provisions of the Edmunds Act that the Commission remained convinced that it had not broken the political control of the polygamist hierarchy of the Church. So far as the Commission was concerned, the Edmunds Act had proved an almost total failure in the accomplishment of its political aims. The organization of the Church, with its strong group affinity and belief in subordination to higher authority, evidently preserved to a great degree the political power of the Church leaders.

The Edmunds-Tucker law.--The imposition of additional political restrictions provided by the Edmunds-Tucker law--the disfranchisement of women and the requirement of a more stringent oath--did much to weaken the political control of the entire Mormon group, and had a consequent effect on the political power of the Church leaders. However, the hierarchy of the Church continued to remain in control. The political sanctions had, as yet, exercised little influence to hasten the abandonment of polygamy. In its 1887 majority report, submitted following the passage of the

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[1] Ibid., II (1886-7), 1006.

Edmunds-Tucker Act, the Commission continued to emphasize its conviction that political control was still lodged in the Church leadership. It recommended that the Governor of the Territory be given the power to appoint most of the local and territorial officers. It justified this recommendation by advising Congress that "common prudence suggests there should be no delay in taking from the Mormon church the power to control in political matters."[1] They found the influence of the leaders so great, and the organization so compact that the entire membership operated as a unit,[2] with the Church leaders controlling in both religious and political matters.[3] Such language certainly implies, if it does not prove, that the majority of the Commission held no illusions as to having broken the control of the Mormon church leaders in politics. In 1888, the Commission, chafing at the slow progress being made toward the abolition of polygamy, reported that "In our opinion, one of the chief causes for the long delay in the settlement of the contest in Utah has been the exercise of political power subordinate to the interests of the church." It also found that the counsels of the Church leaders "had great, if not controlling, influence over the minds of their followers."[4] The 1890 report continued, as had the others,

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[1] Mess. and Docs., Int. Dept., II (1887), 1343.

[2] Ibid., p. 1330. [3] Ibid., p. 1336.

[4] Ibid., III (1889-90), 181.

to submit evidence that the Mormons had not abandoned either the practice of polygamy or the control of political affairs by the polygamist Church leaders. Within two months of the submission of that report, President Wilford Woodruff of the Latter-day Saints Church issued the famed Manifesto which resulted in the official abandonment of polygamy by the Mormon church. Analysis of the reasons for that abandonment is contained more comprehensively in chapter IX; however, it should be emphasized at this point that the political sanctions of the Edmunds and Edmunds-Tucker laws made only partial contributions. Under such sanctions the Mormons had continued politically dominant in most areas, and the hierarchy of their Church had continued to exercise extensive political influence through the virtue of its strong ecclesiastical position and the unity of the Mormon group.

Inasmuch as the aim of the Edmunds and Edmunds-Tucker Acts was to secure the abolition of polygamy, the question of whether the leaders of the Church continued to exercise political influence after the issuance of the Manifesto is beside the point of the present discussion. The report of the Commission, however, seems to prove that the members of that body never became convinced that they had removed political power from the polygamist leaders--they had merely prohibited that group from voting or holding office. However, the members thereof, because of their Church offices and the nature of the

Mormon religious organization, had continued as the actual political leaders of Utah.

It is admitted that conclusions on this point, based solely on the reports of the Commission, may be subject to the criticism that adequate sources have not been used as evidence. It is sufficient answer to this to note that no other source could be more authentic or as well informed, for the Commission was in the best possible position to know whereof it spoke. It is also admitted that the Commission's statements conceivably might have been designed for propaganda purposes to secure more severe anti-Mormon legislation. This, however, seems unlikely in view of the circumstances concerned and the length of time involved.

CHAPTER VI

THE STRUGGLE FOR LOCAL OFFICES

Throughout much of Utah's early history there continued a bitter struggle between the Gentiles and the Mormons for control of territorial and local offices. The bitterness of the struggle was increased by the conviction in the minds of some of each faction that justice could not be procured with the control of the offices concerned in the hands of the opposition.

The Organic Act of the Territory of Utah had provided that the governor, secretary, chief justice and associate justices, attorney and marshall, should be appointed by the President upon the approval of the Senate.[1] All other offices in Utah were to be appointed or elected in accordance with the following provisions:

> All township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the Territory of Utah. The governor shall nominate, and, by and with the advise and consent of the legislative council, appoint all officers not herein otherwise provided for.[2]

The Utah Legislature shortly proceeded to make all county officials elective,[3] and also provided that the territorial treasurer and auditor should be elected by the vote of

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[1] Utah Code Annotated, I (1943), 50. [2] Ibid., p. 46.
[3] Compiled Laws of Utah (1866), pp. 55-95.

the people.[1]

In relation to the organization of the courts, the Organic Act had provided that the "judicial power . . . shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace."[2] The Supreme Court was composed of three judges, appointed by the President. Each of these also presided over one of the three District Courts. The jurisdiction of each of the courts was to be as "limited by law." These legal administrative provisions readily lent themselves to jurisdictional conflicts which developed shortly. The Mormons, suspicious of the judges sent among them to preside over the Supreme and District Courts, and anxious to have legal proceedings conducted by judges of their own choosing, in 1855 enacted a law which in effect restricted the District Courts to the consideration of cases arising under United States law, and gave to the Probate Courts full civil and criminal jurisdiction.[3] It then provided that the judges of probate were to be elected by the Territorial Legislative Assembly, which being solidly Mormon in composition, selected judges from the Mormon population.[4] This arrangement permitted the Mormons to try civil and criminal cases before judges chosen from

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[1] Ibid., p. 75. Approved January 20, 1852.

[2] Ibid. (1876), p. 31. [3] Ibid. (1866), p. 31.

[4] In 1874, Probate Judges were made subject to direct election in the county concerned. See Compiled Laws of Utah, (1876), p. 120.

among the Mormon people instead of those appointed by the President and sent from the east, some of whom had proven to be unfit for their position and prejudiced toward the Mormons.[1] The Mormons justified this unusual grant of power to the Probate Courts by pointing out that it was given in 1855, at a time when the District Courts were not functioning due to lack of personnel; and further, that the step was in conformity with the rules of local self government.[2] The Gentiles saw in such organization a system which permitted crimes to go unpunished, and both the life and property of the Gentiles to go unprotected.[3] They further alleged that the criminal jurisdiction of the Probate Courts was used as a shield against prosecutions for polygamy.[4] Partially as a result of Gentile agitation, the power of the Probate Courts was, as previously noted, severely restricted by the Poland Act of 1874.[5]

Under these territorial laws, county and territorial offices had remained solidly in Mormon hands until the election of 1874, when the Liberals "captured" the offices in Tooele county. Fraud was alleged by the Mormons, who charged that over a thousand more votes had been cast than there were

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[1] B. H. Roberts, A Comprehensive History of the Church (Salt Lake City, Utah: Deseret News Press, 1930), IV, 198-206.

[2] Ibid., p. 194-5.

[3] Baskin, op. cit., p. 17.

[4] Ibid., p. 4.

[5] Reference--chap. I.

eligible voters in the county.[1] Convinced that the capture of Tooele by the Gentiles had been made possible by reason of the lack of a registration law, the Mormon legislature adopted, in 1878, a new electoral statute which contained a requirement of registration as a prerequisite for voting.[2] This provision again returned local offices solidly into Mormon hands.

The passage of the Edmunds Act created two new chapters in this struggle for local office: (1) a legal chapter, and (2) a political chapter. Each will be discussed briefly.

The legal struggle.--It will be remembered that Utah law scheduled the election of local officers for the first Monday in August. Such an election was set for August 8, 1882 to fill the offices shown in table 16. Section nine of the Edmunds Act vacated all election offices of every description in Utah, thereby making any election impossible until the Utah Commission filled the vacated positions. Inasmuch as the Utah Commission did not arrive in Utah until after August 8, no election was held, and the question of what to do about the offices concerned presented itself. No provision of law authorized their election at any other time, nor did the law provide a method by which they could all be filled by appointment.

This impasse caused the three federal judges in Utah

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[1] Whitney, op. cit., II, 1748-49.

[2] Compiled Laws of Utah, I (1888), 318-39.

to forward to the chairman of the Senate Judiciary Committee a long letter requesting that congressional legislation be provided to meet the crisis.[1] As a result, Congress enacted the so-called Hoar Amendment, which read:

> The governor of the Territory of Utah, is hereby authorized to appoint officers in the said Territory to fill vacancies which may be caused by a failure to elect on the first Monday in August, 1882, in consequence of the provisions of an act entitled "An

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[1]Salt Lake Tribune, August 18, 1882. The letter read:

"The undersigned Judges of the Supreme Court of the Territory of Utah respectfully represent:

"That the Edmunds bill, so called, vacates all registration and election offices in Utah, that by reason of this no registration of voters has been made in this Territory this year, which the local law requires to be done in May and revised the first week of June, and none but registered voters can vote; that by reason of such failure of registration and lack of election officers, the election fixed for the first Monday in August 1882, cannot be held; that at such election there would have been chosen successors to all the present county officers, and also to the Territorial Auditor and Treasurer as directed by Territorial statute; that those successors cannot now be chosen for the reasons given; that the failure to elect is liable to cause general disturbance and trouble, especially in view of the well-known fact that many of the present incumbents are understood to be polygamists, and so disqualified under the law above referred to to hold office. We therefore ask that Congress shall take such measures as shall provide for legal successors to all the present incumbents of office whose successors would have been chosen at the August election, and thereby secure the continuance of good order and the regular and undisputed support of organized government, which otherwise would be seriously jeopardized.

"We have delayed this representation as long as possible, hoping for the advent of the Election Commissioners, but they have not yet come.

"Dated July 20, 1882.

John A. Hunter, Chief Justice
Philip H. Emerson, Associate Justice
Stephen P. Twiss, Associate Justice
Supreme Court of Utah"

act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22, 1882, to hold their offices until their successors are elected and qualified under the provisions of said act, provided that the term of said officers shall in no case exceed eight months.[1]

The provision which limited the term of such appointees to eight months was inserted at the insistence of Senator Brown, of Georgia, who detected the possibility of a political coup whereby the Governor might appoint the officers concerned for an indefinite time and thereby turn the government of the Territory over to the minority. He called the attention of the Senate to the fact that the Edmunds Act contained no specification requiring the Utah Commission to either undertake its duties or hold an election for the offices concerned at any specific time--thus creating the possibility that the officials appointed by the Governor might continue in office "for years."[2]

The Hoar amendment, hurriedly drawn and passed, was worded in such a way as to leave room for disagreement as to its meaning.[3] The principal weakness in the measure was that it failed to clearly define the intent of Congress with regard

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[1] Congressional Record, XIII, Part VII, 6796.

[2] Ibid.

[3] The Senate might be excused for its hurried and inefficient work when it is understood that this was but one over two hundred amendments to the Sundry Civil Appropriations Bill, all of which were considered in the space of one legislative day.

to the offices involved. Did that body intend that vacancies would exist in all offices concerned at the expiration of the regular term, or not? The Tribune, as spokesman for the liberals, insisted that the amendment invested in the Governor "the power to appoint with precisely the same force and effect the election would have had."[1] The Mormons countered with the argument that no vacancies whatever existed because the provisions of Utah law authorized officeholders to remain in office until their successors were elected and qualified.[2] The provisions of Utah law, as they related to the offices concerned, are shown in table 16. There is little doubt in this instance that the Mormons had the best of the argument. A close reading of the debates indicates the clear intent of Congress that the provision of Utah law should operate with respect to incumbent holdovers.[3] However, the Gentiles admitted no such

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[1] Salt Lake Tribune, Aug. 10. 1882.

[2] Deseret News, July 7, 1882.

[3] The following colloquy is excerpted from the debate:
"Mr. Blackburn: I did not see any necessity for ousting men from office when under the law of the Territory of Utah they would remain in all cases where the statute declaring that the incumbent should hold until his successor was elected and qualified. I tried to get a modification (in the Conference Committee) to that extent and failed. I trust that in this statement I do not violate the secrets of the committee room.
"Mr. Butterworth: Allow me to call the attention of my colleague on the conference committee to the fact that it was agreed in the conference committee that what the gentleman proposes was effected by the law as it stood.
"Mr. Blackburn: I mean to deal fairly in this matter,

TABLE 16

ELECTION AND CARRY OVER PROVISIONS OF UTAH LAW
FOR OFFICES INDICATED*

Office	Even or Odd Numbered Year of Election	Term	Carry Over Provision
Territorial Offices			
Auditor	Even	2 years	Until successor shall be elected and qualified
Treasurer	Even	2 years	Until successor shall be elected and qualified
County Offices			
Probate Judge	Even	2 years	Until successor duly elected and qualified
Selectmen	Annual	3 years	Until successor is elected and qualified
County Clerk	Even	2 years	Until successor elected, or appointed, and qualified
Sheriff	Even	2 years	Until successor is qualified
Prosecuting Attorney.	Even	2 years	Until successor is duly elected and qualified
Treasurer	Even	2 years	Until successor is duly elected and qualified
Recorder	Even	2 years	Until successor is duly elected and qualified
Coroner	Even	2 years	Until successor is elected and qualified
Assessor	Even	2 years	Until successor is elected, or appointed, and qualified

*Source: Compiled Laws of Utah, 1888.

meaning and marshalled local legal opinion to substantiate their point of view. Long discussions on the subject were published in the papers.[1]

By proclamations dated September 16,[2] 27,[3] and October 20,[4] Utah's Governor Murray appointed approximately one hundred seventy-five persons, practically all Liberals, to the offices concerned.[5] Several of these appointees attempted to qualify and occupy the offices to which they had been appointed, but were denied access thereto by the Mormon incumbents. Immediately, a series of mandamus actions was instituted in the courts. In the Third District Court, in Salt Lake, Arthur Pratt and Dr. George C. Douglas sought a mandate to secure for them the offices of Territorial Auditor and Sheriff of Salt Lake county, respectively.[6] Without deciding the question of the right of the Governor to appoint, the appeal was denied by the court on the ground that the plantiffs had not properly qualified for the offices concerned.[7] The major test case

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and I was going to say that while the amendment which I offered was voted down, every member of the conference committee insisted that the law itself provided for the case. I only sought to make it more specific." See Congressional Record, XIII, Part VII, 6981.

[1] Salt Lake Tribune, Aug. 23, 1882.

[2] Ibid., Sept. 17, 1882. [3] Ibid., Sept. 28, 1882.

[4] Ibid., Oct. 21, 1882. [5] Roberts, op. cit., VI, 65.

[6] Ibid., Sept. 20, 1882. [7] Ibid., Oct. 31, 1882.

regarding the Governor's power was heard in the First District Court, in Ogden, and involved the attempt of James N. Kimball to oust Apostle Franklin D. Richards, an alleged polygamist, from the office of Probate Judge of Weber county. The issuance of the writ was approved by the District Court;[1] however a stay of execution was granted while an appeal was taken to the territorial Supreme Court, which upheld the decision of the lower court.[2] Judge Richards, one of the leading legal authorities in Mormon circles, immediately entered further appeal to the Supreme Court of the United States. Other cases were held in abeyance, awaiting decision of that tribunal. However, before it had an opportunity to consider the case, the eight months for which the appointees might have occupied the offices expired, and there was no further need for a decision.[3] None of the Governor's appointees secured office. The Mormons had, through the benefit of the eight month limitation and by their own legal agility, succeeded in retaining control of the offices, but only at the cost of a deepened rift between themselves and the Gentile group. The Tribune

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[1]Whitney, op. cit., III, 219. [2]Ibid., p. 220.

[3]Ibid. Dwyer misinterprets this incident by assuming that the Gentiles secured office at the time the Governor announced his appointments. He comments that "there seems to have been little if any local complaint as to the abuse of office by the Gentile appointees." Small wonder, for they never secured the offices. See Robert Joseph Dwyer, The Gentile Comes to Utah, Catholic University Press, 1941), pp. 217-19.

charged that the Mormon action amounted to a nullification of federal law as "blatant as any which transpired in the days of Calhoun," and titled the Mormon refusal to vacate the local offices as the Utah Rebellion.[1]

Early in May of 1883, the Commission reconsidered the question of the officials whose terms were "carrying over." Commissioners Carlton and Godfrey were appointed as a sub-committee to study the problem.[2] On June 13, the Committee recommended, and the Commission approved, the holding of a special election to fill the unexpired term of all of the offices concerned, with the exception of those of territorial auditor and treasurer which they determined should be filled by appointment.[3] To make that election more convenient, it was held along with the regular August general election.

This action of declaring a special election, represented another interesting exercise of power on the part of the Commission. As will be noted by reference to table 16 nearly all of the offices carried two year terms, and the law provided for election to the office, biennially, on even numbered years. For example, the provision respecting the election of Probate Judges read as follows:

> On the first Monday in August, A. D. 1874, and every two years thereafter, there shall be elected by

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[1] Salt Lake Tribune, Sept. 27, 1882.

[2] U. C. Minutes, A, 160. [3] Ibid., p. 191.

> the qualified voters of the several counties of Utah Territory, one Probate Judge for each county, whose term of office shall be for two years and until his successor in office is duly elected and qualified.[1]

Even a modestly strict interpretation of the law would certainly demand that the elections for Probate Judge be held on the even numbered years. If the carry over principle was good at all, it would seem that it must be good until a successor could be selected at the regular time. The Commission, however, exercising legislative power which had no clear basis in the Edmunds Act, wrote what amounted to a new provision of the Utah election laws. Inasmuch as the special election met with the general approval of the people, the authority of the Commission in this regard was not seriously challenged.[2] However, the decision that the Auditor and Treasurer should be appointed by the Governor did not escape so easily. The possibility that two such important offices should be placed in the hands of the Liberals aroused the Mormons to vigorous objection.[3] The problem was added upon by the fact that two more territorial offices, those of Superintendent of District Schools and Commissioners to Locate University Lands, which were scheduled to be filled in the 1883 August election, were also declared by the Commission to be appointive.[4] Theoretically,

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[1] Compiled Laws of Utah (1876), p. 122.

[2] Deseret News, June 14, 1883. [3] Ibid.

[4] U. C. Minutes, A, 189.

the dispute centered around the interpretation of law; but practically, it was heavy with political overtones, for the control of the positions concerned was at stake. If the Governor were permitted to make the appointments, Gentiles would occupy the offices--if filled by election, the Mormons would control as they had in the past. Each of the offices possessed powers which might be exercised to the advantage or disadvantage of either group. The position of Superintendent of Schools was especially desirable to the Gentiles, who had for years complained at the Mormon church dominated operation of Utah schools, and eagerly awaited an opportunity to gain control through which a change might be effectuated.[1] The legal argument revolved around an apparent conflict between the Organic Act and territorial statutes. The section of the Organic Act involved, contained two provisions: (1) that all township, district, and county officers were to be selected as provided by law, and (2) that all officers not otherwise provided for were to be appointed by the Governor and approved by the Council. The question was, fundamentally, whether the four offices concerned were such as might be filled by election, or were they among those not "otherwise provided for" in the Organic Act. The issue was confused by the fact that Utah law, providing for their election, had been in force for many years without congressional objection.

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[1]Baskin, op. cit., p. 198.

As noted previously, the Commission, when called upon for its decision, decreed that the offices concerned should be filled by appointment of the Governor and approval of the Legislative Council, and that the territorial statutes providing otherwise were in conflict with the Organic Act and therefore invalid. This action again represented an interesting and extensive exercise of power--this time in the judicial realm. The Commission, which in its reports had complained of its lack of power, had assumed to declare acts of the Territorial Legislature to be invalid--an exercise of the judicial power worthy of the highest functions of the courts. The decision, regardless of the power of the Commission to make it, did nothing to solve the problem at hand; for so long as the Council refused to approve the Governor's appointees, the incumbents remained in office under the carry over provisions of Utah law.

This administrative impasse continued for the next six years. The Commission refused to hold elections to fill the offices concerned, and the incumbents refused to relinquish their positions to the governor's appointees. They justified their continued tenure upon two bases: (1) that no appointments had been made because of the lack of Council approval, and (2) no vacancy existed in the office, because inasmuch as no other person had been elected the incumbents were carrying over in conformity to Utah law. The Commission's

interpretation was upheld by an opinion of the District Attorney in 1884,[1] but with no resulting effect on the occupancy of the offices involved. May 15, 1885, the Commission sought the opinion of the Attorney General on the vexed question and on July 23 received his reply,[2] which held that the Territorial Superintendent of District Schools, Territorial Auditor of Public Accounts, and Territorial Treasurer should be appointed. Utah laws providing otherwise were in conflict with the Organic Act, and therefore void. The Commissioners to Locate University Lands were to be elected.[3] One office, therefore, had been removed from the deadlock and returned to Mormon hands. The impasse with respect to the Territorial Superintendent of District Schools was broken only by the passage, in 1887, of the Edmunds-Tucker Act, which abolished that office and substituted therefor a Commissioner of Schools appointed by the Utah Supreme Court.[4] The two original offices in the controversy, those of Treasurer and Auditor, remained in status quo until 1890, when a decision of the Supreme Court of the United States, in the case of Pratt v. Clayton, held that the offices concerned could be filled only by gubernatorial appointment. Mr. Arthur Pratt, an appointee of the Governor, was installed

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[1] Salt Lake Tribune, July 31, 1884.

[2] U. C. Minutes, B, 130. [3] Ibid., p. 134-6.

[4] The Edmunds-Tucker Act also made Probate Judges appointable by the President.

in the office of Auditor vice Mr. Nephi W. Clayton, who had occupied that office without interruption since his election in 1880.[1] This decision also covered the Auditor's office, and Bolivar Roberts was installed in place of James Jack.[2] By that time, conditions in Utah were changing so rapidly that the Gentile victory was of lessened import.

The political struggle.--So long as the Mormons maintained their full voting strength, the chance to break their monopolistic control of local governments was small. However, following the passage of the Edmunds-Tucker Act, the majority of the Commission visualized the possibility of securing some representation for the Liberals in Salt Lake and Ogden. These two cities were primary centers of business and industry in which the Gentiles had engaged extensively. They had never been successful, however, in winning political office therein. The fact that the city councils were elected at large gave the dominant People's Party solid control. To assist the Liberals in their fight to secure office, the Commission recommended in its 1887 report that there be created a board composed of the Governor, Utah Commission, and Territorial secretary, which would be authorized to apportion Salt Lake

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[1] U. S. Reports, X, 190-4.

[2] Whitney, op. cit., III, 725. Mr. Roberts and Mr. Pratt were given retroactive pay since the date of their nomination by the Governor, and a special appropriation by the Legislature reimbursed Clayton and Jack for their de facto services as Auditor and Treasurer.

City into aldermanic districts.[1] Thereby it was hoped that certain districts which had a heavy concentration of Liberals would elect Liberal representatives. Congress failed to approve the plan, but the suggestion may have had some effect in bringing the People's Party to the conclusion that the Liberals should be given some representation. In 1888 the leaders of that party proposed that there be formed a fusion ticket, known as the Citizens Party, which would contain four Liberals and nine members of the People's Party. Although the more radical of the Liberals objected to such an alliance, it was finally accomplished and all officers thereon elected.[2]

This magnanimous action on the part of the People's Party may have been just that, or it may have been a sort of political prevision of the shape of things to come. Ogden and Salt Lake were growing rapidly and much of the business expansion was under the control of the Gentile citizens. Perhaps the managers of the People's Party sensed the growing strength of the Liberals. If such were the case the planning was sound, for in 1889 the Liberals successfully captured the Ogden municipal election. The election had been hotly contested; and following its defeat, the People's Party claimed that the victory had been won by fraud. It was charged that the railroads

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[1] Mess. and Docs., Int. Dept., II (1887-8), p. 1343.

[2] Ibid., pp. 617-23.

had brought in loads of men "to vote the Gentile ticket,"[1] who through the cooperation of the registrars and judges of election had been permitted to vote. The Utah Commission took no action to investigate the allegations, but certified the Liberals as elected. The fact that the Commission favored a Liberal victory seems evident. At times past it had increased the number of polling places in Ogden "as requested."[2]

The fall election of 1889, at which members of the Legislative Assembly were elected, gave the Liberals another victory, for that election showed that the Liberals had polled a majority of forty-one votes in Salt Lake. This stirred the Liberals to great activity in preparation for the municipal election which came the following year. All thoughts of a fusion ticket vanished with prospects of total victory. The struggle for the control of Salt Lake commenced with the November 1889 registration.[3] The Commission had adjourned for the year, and the various members were at their homes. On November 30, Heber M. Wells, vice-chairman of the People's Party, telegraphed Mr. G. L. Godfrey, Chairman of the Commission, at his home in Des Moines, and demanded that the Commission return to Salt Lake immediately because justice demanded the removal of certain registrars due to their partisan

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[1] Ibid., p. 680. [2] U. C. Minutes, A, 70.

[3] Mess. and Docs., Int. Dept., III (1890-91), 399.

action in denying registration to qualified voters of the People's Party.[1] Chairman Godfrey considered the charges of sufficient gravity that he called a special meeting of the Commission in Salt Lake for December 10. At that, and subsequent sessions, evidence of malfeasance was presented by the People's Party. The Commission sat as a court to hear the testimony, and on the 19th of December handed down its decision to the effect that charges were not sustained by the evidence, and refused to remove the registrars concerned.[2] Appeal was made to the courts, but to no avail.[3]

The climax of the campaign came February 6, when the Deseret News reported:

> Two of the registration officers of this city made a trip in a special car over the Rio Grande Western and registered by wholesale gang after gang of employees found at various points between here and the Colorado line. . . . The members of the Utah Commission, it is presumed have full knowledge of this flagrant crime.[4]

The Commission denied that it had any such information,[5] but strangely enough took no direct action to determine the truth of the allegation. Affidavits were obtained testifying to the action, but the Commission gave them no credence

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[1] U. C. Minutes, D, 300.

[2] Mess. and Docs., Int. Dept., III (1890-91), 405.

[3] Ibid., p. 407. [4] Deseret News, Feb. 6, 1890.

[5] U. C. Minutes, D, 346.

because of their source.[1] Further partisan disqualification of People's Party voters was allegedly committed on election day, but the Commission found none.[2] The result of the election showed a clear Liberal victory, and the Commission reported that it believed "the election to be a fair one and had no doubt that the Liberal party fairly won the day."[3] The representatives of the People's Party disagreed and remained convinced that fraud, with the cooperation of the Commission, had been perpetrated.[4] Whether such was the case cannot be proved at this late date; but the Commission left itself open to suspicion of the truth of the Mormon allegation by its hesitancy to make thorough investigation of the alleged frauds. The following paragraph from its 1890 report seems to be an admission that its management of the elections had achieved the victory:

> The Commission feels justified in pointing with some degree of pride to the results that have been attained through its administration of the election laws in the Territory, and in expressing the opinion that without . . . the thorough and conscientious manner with which the Commission has endeavored to enforce them, such good results would be among the things to be hoped for, but not attained.[5]

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[1] Mess. and Docs., Int. Dept., III (1890-91), 412

[2] Whitney, op. cit., III, 708.

[3] Mess. and Docs., Int. Dept., III (1890-91), 412

[4] Whitney, op. cit., III, 708-9.

[5] Mess. and Docs., Int. Dept., III (1890-91), 413.

Following 1890 and the issuance of the manifesto, the role of the Commission in the struggle for local offices changed character. The breakup on national party lines no longer made the struggle one of Mormon versus Gentile, and the Commission's active role of aiding the Liberals disappeared.

The partisanship of the Commission in relation to local offices was further demonstrated by its repeated recommendations that the Congress make all major county offices appointable by the Governor.[1] That such a proposition was never adopted was no fault of the Commission.

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[1] Ibid., (1884-5), p. 521 and (1887-8), p. 1342.

CHAPTER VII

THE COMMISSION AND ADMINISTRATION

Organization.--The administrative organization of the Commission remained standard throughout its existence. The central headquarters consisted of a five man bi-partisan board, whose composition changed primarily with the change of control of the presidency, as indicated in table 17. The chairmanship of the Commission was determined by vote of the members,[1] but was always held by the party in power. Decisions were made on the basis of majority vote. The Secretary of the Territory served ex-officio as the Secretary of the Commission. In addition, the Commission usually employed one or two clerks at a salary of seventy-five to one hundred and twenty-five dollars per month.[2] With such a small staff, there existed no major problem of organization at headquarters.

In headquarters-field relationships, however, the Commission found its problem a little more complicated. As has been noted, it started with the assumption that all of the registrars and judges of election were under the direct control of the Commission; but such assumption was declared erroneous in Murphy v. Ramsey. Before the decision in that case, the Commission instructed its representatives directly

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[1] U. C. Minutes, B, 223. [2] Ibid., C, 206; 323.

by means of its regulations. Thereafter, it was obliged to merely suggest courses of action. However, the Commission continued to exercise effective supervision over the registrars and judges of election through the use of its power of removal. Inasmuch as the registrars and judges were in the "employ" of the Commission such short periods of time each year, there were no clearly defined attempts at organization. Evidently, the Commission found that it could operate by appointing all the personnel concerned and supervising each directly. No regional offices were established, nor were the lines of communication complicated. The registrars and judges communicated directly with the Commission and vice versa. This created a tremendous span of control, but in view of the circumstances was probably good administration. These few observations indicate that the Commission is of little interest as a study in organizational technique. No doubt the simplicity it was able to maintain would be the envy of many organizations today--a simplicity made possible by the nature of the Commission's work, which required that it be "in business" for only short periods of every year during elections.

Personnel.--A complete list of all persons who served on the Commission is contained in table 17 which follows. Reference to that table will indicate that a total of fifteen different commissioners served on the Board. The longest tenure was that of Commissioner Godfrey who served twelve

TABLE 17

PERSONNEL OF UTAH COMMISSION*

Personnel	Party	Term Served	Length	Residence
1882-85--Pres. Chester A. Arthur				
Alexander Ramsey, Chr.	R	1882-86	4 yrs.	Minnesota
G. L. Godfrey	R	1882-94	12 yrs.	Iowa
A. G. Paddock	R	1882-86	4 yrs.	Nebraska
A. B. Carlton	D	1882-90	8 yrs.	Indiana
James R. Pettigrew	D	1882-86	4 yrs.	Arkansas
Arthur L. Thomas, Sec.	.....	.....	.....	.....
1885-89--Pres. Grover Cleveland				
A. B. Carlton, Chr.	D	.....	.....	Indiana
A. B. Williams	D	1886-94	8 yrs.	Arkansas
Gen. John A. McClernand	D	1886-94	8 yrs.	Illinois
G. L. Godfrey	R	.....	.....	Iowa
Arthur L. Thomas	R	1886-89	3 yrs.	Pennsylvania
Wm. C. Hall, Sec.	.....	.....	.....	.....
1889-93--Pres. Benjamin Harrison				
G. L. Godfrey, Chr.	R	.....	.....	Iowa
R. S. Robertson	R	1889-94	5 yrs.	Indiana
Alvin Saunders	R	1889-93	4 yrs.	Nebraska
John A. McClernand	D	.....	.....	Illinois
A. B. Williams	D	.....	.....	Arkansas
Elijah Sells, Sec.	.....	.....	.....	.....

TABLE 17--Continued

1893-94--Pres. Grover Cleveland				
A. B. Williams, Chr.	D	.....	.....	Arkansas
John A. McClernand	D	.....	.....	Illinois
Henry C. Lett	D	1893-94	1 yr.	Utah
R. S. Robertson	R	.....	.....	Indiana
G. R. Godfrey	R	.....	.....	Iowa
C. C. Richards, Sec.	.....	.....	.....	.....
1894-96--Pres. Grover Cleveland				
Jerrold R. Letcher, Chr.	D	1894-96	2 yrs.	Salt Lake City
Albert G. Norrell	D	1894-96	2 yrs.	Salt Lake City
Geo. W. Thatcher	D	1894-96	2 yrs.	Logan
Erasmus W. Tatlock	R	1894-96	2 yrs.	Salt Lake City
Hoyt Sherman	R	1894-96	2 yrs.	Salt Lake City
C. C. Richards, Sec.	.....	.....	.....	.....

*Utah Commission Minutes.

years. The shortest career was experienced by Commissioner Lett, the first Utahn appointed to the Board. He died after but one year in office. An analysis of the state of legal residence of the Commissioners shows that the membership was recruited primarily from the midwest, a region which had experienced close contact with Mormonism in its earlier years. That the selection, which produced such a concentration of midwesterners, was not entirely accidental seems likely. It should be noted, of course, that after the passage of the Utah Enabling Act in 1893 the Commission was composed entirely of Utah residents in accordance with congressional demand.[1] The calibre of men appointed to the Commission was relatively high. Reference to table 1, page 54, will indicate the background of the first members of the Commission. Background material is not available on all who were appointed, but it seems safe to conclude that, in general, men of wide experience and considerable ability were selected for the Commission.

It is interesting to note that no man who became chairman of the Commission continued as a member of that body following a change in national political control. Whether this was the result of coincidence or party strategy is not known. The likelihood is that party strategy played the dominant role. Each party, being interested in bringing Utah into the Union under the party banner, would desire that the

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[1] 27 Stat. 206.

Commission operate in its favor. The best way to assure that result was to remove the stronger members of the opposition party from the Commission. In all instances, this evidently turned out to be the retiring Chairman, who was required not only to relinquish the chairmanship of the Commission but also his membership thereon. This fact, had it been realized by the Commissioners, may have made the chairmanship hard to fill.

The quality of the "field" personnel of the Commission, the registrars and election judges, bore varying reputation both as to character and efficiency, depending upon the faction commenting at the particular time concerned. Generally, the Mormons, through their People's Party, insisted that the local officials were of less than top quality. C. C. Richards, one of the leading attorneys of the People's Party and later Secretary of the Utah Commission, charged that "in the selection of deputy registrars care is taken in all the important precincts that an irresponsible, and in some instances, disreputable elector is chosen."[1] Mr. Franklin S. Richards, attorney for the Latter-day Saints Church and leader in People's Party activities, testified before the House Committee on Territories that the "Commission have appointed men known to be professional gamblers, without any pecuniary

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[1] Mess. and Docs., Int. Dept., III (1892-93), 456.

responsibility, and whose word would scarcely be taken on oath."[1] A later and calmer appraisal by Orson F. Whitney, prominent Mormon historian and active participant in the events transpiring under the domination of the Commission, described the officers as generally "good reliable men, though some were arrogant and presumptuous."[2] Whitney's appraisal is probably the more accurate. Of course, it should be added that the Commission never intended, or even desired, that its appointees would be non-partisan. Liberals were selected in the majority of instances with the aim in mind that they would not further the cause of the People's Party or the Mormon church. The chief criticism which should be leveled at the registrars was not so much that they were either stupid or corrupt but that their selection was such a denial of the basic democratic concept of majority rule, for it will be remembered that the Commission followed as its appointment guide "Liberals wherever possible." The Gentile group seldom made complaint as to the calibre of the registrars and judges of election, except to withhold its approval of the selection of any Mormons for the offices concerned.

Political Control of the Commission.--Further reference to table 17 will indicate the interesting fact that each of the major political parties controlled the Commission for

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[1] Ibid., p. 457. [2] Whitney, op. cit., III, 227.

approximately equal lengths of time. The Republicans dominated from 1882-85 and 1889-93--a period of seven years. The Democrats had a majority from 1885-89 and 1893-96--a like period of seven years. Each party, therefore, had nearly equal opportunity, through its members on the Commission, to influence the politics of Utah as she approached statehood. It would seem that the Democrats held dominance at the most propitious time--from 1893-96. This period, in which Utah's Enabling Act was passed and all of the elections leading to statehood were held, should have been most rewarding for party activity. The fact that Utah entered the Union as a Republican rather than a Democratic state is an outcome which was somewhat surprising under the conditions then existing. This is a chapter of Utah's political history which needs much further study and analysis by some competent scholar.

Expenses of the Commission.--The expenses of the Commission, as revealed by annual congressional appropriations, are shown in table 18. Typical yearly distribution of expenditures is shown in table 19. Reference to table 18 will indicate that the overall cost of the Commission to the taxpayers of the United States was $748,000--a sizable amount even by modern standards. The amount appears even more substantial when it is known that at the time of the passage of the Edmunds Act the members of the majority Republican Party assured the nation that the Commission would cause no expense

TABLE 18

CONGRESSIONAL APPROPRIATIONS
UTAH COMMISSION 1882-95*

Year	Commissioner's Salaries	Traveling, Printing, Clerk Hire	Election Officers	Total
1882[a]	$ 25,000	$ 15,000	$ 25,000	$ 65,000
1883	25,000	15,000[b]	25,000	65,000
1884	25,000	15,000	25,000	65,000
1885	25,000	15,000	25,000	65,000
1886	25,000	10,000	25,000	60,000
1887	25,000	10,000	25,000	60,000
1888	25,000	8,000[c]	25,000	58,000
1889	25,000	8,500	25,000	58,500
1890	25,000	8,500	25,000	58,500
1891	25,000	8,500	25,000	58,500
1892	10,000	7,000	25,000	42,000
1893	10,000	7,000	25,000	42,000
1894	10,000	7,000	25,000	42,000
1895	5,000	3,500	.....[d]	8,500
Total ..	$285,000	$138,000	$325,000	$748,000

*Source: U.S. Stat. 22-27.

[a]Figures shown cover fiscal year, July 1 of year shown to June 30 of following year.

[b]Amount payable to the Sec. of the Com. limited in the law to $600, annually, 1883-85. Reduced to $300 other years.

[c]One thousand dollars of this amount was made up by a deficiency appropriation.

[d]No appropriations made for election officers because Utah was admitted as a state and elections supervised within the state. 1895 appropriation was to enable the Commission to close up its work.

TABLE 19

FINANCIAL STATEMENT--UTAH COMMISSION
1894-5*

Appropriation		
Compensation to the five Commissioners		$10,000
Contingent expenses		7,000
Compensation and expenses, officers of election ..		25,000
		$42,000
Expenditures		
Officers and expense of election	$22,502.68	
Members of the Commission	10,000.00	
For clerical services	4,795.00	
Printing and stationery	1,451.92	
To canvassing boards	669.25	
Traveling expenses of Commission	427.20	
Telephone and sundry items	415.76	
Copying registration lists	379.43	
For fuel and lights	369.44	
For janitor	360.00	
Secretary	300.00	
Returned to the Treasury (unexpended)	329.32	
		$42,000

*Mess. and Docs., Int. Dept., III (1893-4), 637.

That this distribution of expenditures is typical of other years may be assumed. However, it is interesting to note that this statement is the first such contained in the Commission's reports. Evidently, governmental accounting procedures were very lax, at least in relation to the Commission.

to the national treasury, for it would be paid for by the Territorial Legislature. The total impracticability of such an arrangement has already been indicated, and Congress moved wisely, from the standpoint of the success of the Commission, when it decided to appropriate federal funds for its operation. The cost still seems high, however, when it is remembered that Senator Edmunds visualized that the Commission would operate for only a year. The fact that it operated for fourteen again underlines the old public administration maxim that government offices once created live vigorously and die slowly and begrudgingly.

Reference to the annual appropriations indicates that during the first period of its administration, 1882-85, the Commission received a standard appropriation of $65,000 per annum. Immediately following the Democrats' accession to power in 1885, however, the sum was reduced to $60,000--the reduction coming in the appropriations for travel, printing, clerk hire, etc., which was cut from $15,000 to $10,000. In 1888, the Democrats further reduced this item to $7,000, but the Commission claimed that it was unable to operate on such a small amount and Congress provided a deficiency appropriation of $1,000.[1] Inasmuch as no accounting statements or other data are available by which one might assess the

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[1] 25 Stat. 909.

efficiency and frugality of the Commission in its expenditures, it is impossible to determine whether the Commission was wasteful in its use of funds in this area or not.

Appropriations for compensation of the officers of election was a minimum. The rates of pay of the registrars and election judges was the same as prescribed by Utah law and could not be expected to be reduced.

With respect to the amount appropriated for salaries for the Commissioners, there is no need for financial analyses to conclude that this amount was more than adequate for most of the years concerned. It will be remembered that the salary of the Commissioners was fixed at $5,000 per year when it was found that men of experience and reputation would not accept the positions at the initially prescribed salary of $3,000. Five thousand dollars per annum was the same salary as drawn by the members of Congress at the time, a comparison which illustrates the importance attached to the original establishment of the Commission. At that time such appropriations might have been justified, but after 1885 it is hard to justify such high salaries. An analysis of the work load of the Commission will illustrate this point.

Work load.--Throughout the years of the Commission's administration, its work load was not so great that it would strain a hardy bureaucrat. Table 20 shows the days spent in official business of the Commission, travel and session.

TABLE 20

SESSIONS OF THE UTAH COMMISSION*

Meetings	Days Traveling	Days in Session	Total Days
1882			
Chicago, July 17-19	4	4	
Omaha, Aug. 15	4	1	
Salt Lake City, Aug. 19-Nov. 17 .	10	91	
Washington, D. C., Dec. 15-20 ...	6	6	
Total	24	102	126
1883			
Washington, D. C., Feb. 6-13	6	8	
Salt Lake City, Apr. 19-Aug. 24 .	10	128	
Washington, D. C., Oct. 25-30 ...	6	6	
Total	22	142	164
1884			
Salt Lake City, Jan. 15-Mar. 15 .	10	60	
Washington, D. C., Apr. 21-29 ...	6	9	
Salt Lake City, June 16-Sept. 12	10	89	
Salt Lake City, Oct. 20-Nov. 20 .	10	32	
Washington, D. C., Dec. 15-17 ...	6	3	
Total	42	193	235
1885			
Washington, D. C., Mar. 31-Apr. 3	6	4	
Salt Lake City, Apr. 13-Aug. 22 .	10	132	
Washington, D. C., Oct. 20-Oct.29	6	10	
Total	22	146	168
1886			
Salt Lake City, Jan. 15-Mar. 12 .	10	57	
Salt Lake City, Apr. 15-Aug. 13 .	10	121	
Chicago, Sept. 21-24	6	4	
Salt Lake City, Oct. 15-Nov. 12 .	10	29	
Total	36	211	247
1887			
Salt Lake City, Feb. 1-May 17 ...	10	106	
Salt Lake City, June 28-Aug. 19 .	10	53	
St. Louis, Sept. 26-29	6	4	
Total	26	163	189

TABLE 20--Continued

1888			
Salt Lake City, Jan. 17-Mar. 10 .	10	54	
Salt Lake City, May 7-Sept. 15 ..	10	132	
Chicago, Sept. 21-25	6	6	
Salt Lake City, Oct. 15-Dec. 15 .	10	62	
Total	36	254	290
1889			
Salt Lake City, Apr. 1-May 19 ...	10	49	
Salt Lake City, June 25-Aug. 24 .	10	61	
Chicago, Sept. 20-26	6	6	
Salt Lake City, Dec. 10-19	10	11	
Total	36	127	163
1890			
Salt Lake City, Jan. 27-Mar. 8 ..	10	41	
Salt Lake City, May 10-June 9 ...	10	20	
Salt Lake City, July 24-Sept. 5 .	10	44	
Salt Lake City, Oct. 20-Nov. 12 .	10	24	
Total	40	129	169
1891			
Salt Lake City, Jan. 31-Mar. 30 .	10	57	
Salt Lake City, Jan. 11-May 22 ..	10	12	
Salt Lake City, July 15-Aug. 20 .	10	37	
Chicago, Sept. 22-29	6	8	
Total	36	114	150
1892			
Salt Lake City, Jan. 11-Mar. 12 .	10	61	
Salt Lake City, July 21-Aug. 13 .	10	24	
Total	20	85	105
Totals	340	1,666	2,006

*Source: Mess. and Docs., Int. Dept., III (1892-3), 459.

Reference to that table will indicate that the Commissioners spent an average of 182 days per year in travel and work. This means that for six months of each year they were engaged in official business and the other six months they were free to do as they desired. So far as actual work was concerned, the Commission spent an average of 151 days, or approximately five months per year. The other month was spent in travel. It should be observed that some of the figures cited for travel allow time for delay enroute to enable the Commissioners to visit their homes. When it is considered that the Commissioners drew the very respectable salary of $5,000 per year, plus traveling expenses for their six months efforts, the over adequacy of their salary is emphasized. This was especially true in the period following 1884. During this time, the routine of the Commission's administration was well established. Much of the election personnel was subject to reappointment from year to year, thus entailing little effort on the part of the Commission. The fact that the county registrars submitted the names of both deputy registrars and election judges, even when new ones were to be selected, made this process a relatively simple one for the Commission. Furthermore, with some exceptions such as caused by the Edmunds-Tucker Act, the Commission's regulations remained fairly uniform, thus requiring little effort to revise them. The minutes of the Commission give further support to the

contention of an easy assignment. Sessions opened at 10:00 A.M. and continued, with time out for lunch, until business at hand was completed. This usually required the members to stay no later than two or three o'clock in the afternoon. Almost without exception, adjournment came by 5:00 P.M.[1] This schedule required a five hour day as the usual procedure for the Commission, with a seven hour day when the schedule was heavy.

This light work load did not go unobserved by either the Gentile or Mormon factions. Each delighted in pointing it out on occasion when the Commission handed down some displeasing decision. The Tribune in 1887 threatened to "expose the Commission to Congress by a review of its work which would show that it didn't perform more than thirty days worthwhile labor in a year.[2]

Congressional attacks on the Commission.--In spite of the frequent local attacks on the Commission, it was comparatively free from Congressional attack until after the issuance of the Manifesto. However, shortly after the promulgation of that document, the attention of Congress turned to the Commission and its usefulness. In 1892 there was a sufficient number of Congressmen who thought the Commission should be abolished, that the House of Representatives adopted a measure

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[1]Entries throughout Vols. A-G of the U. C. Minutes verify this routine.

[2]Salt Lake Tribune, May 4, 1887.

to cut off the salaries of the Commissioners and transfer their functions to a board of three--composed of the Governor, Secretary, and Chief Justice of the Territory.[1] When the bill was brought before the Senate, however, this action came under the condemnation of several Senators, especially Senator Platt of Connecticut. He maintained that to eliminate the Commission at that moment would be a disservice to Utah because those still suspicious of the sincerity of Mormon intentions would see in such a step a return to former conditions, and therefore increase their opposition to statehood.[2] While he favored the continuance of the Commission, he agreed with a majority of his colleagues that the Commissioners had been overpaid and that the salary should be reduced to $2,000 per annum.[3] In the conference committee which followed, the Senate prevailed in regard to this item and the House conferees accepted the continuance of the Commission at the reduced salary. In the House debate on the acceptance of the committee report, Chairman Washington, of the House Committee on Territories, led the forces opposed to any concession which would continue the Commission. He told the House that the members of the Commission had found "a junketing trip to Salt

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[1] Deseret News, June 2, 1892.

[2] Congressional Record, 52nd Cong., XXIII, Part VI, 5568.

[3] Ibid.

Lake once a year so pleasant that they have held on to their jobs with deathlike tenacity"; and that while in Utah, the members spent most of the two or three months "on tours of recreation and pleasure."[1] Delegate Caine also joined in the attack, charging that the Commission was now completely useless in Utah and represented an affront to the people of that Territory.[2] In spite, however, of the persuasions of these gentlemen, the House concurred in the Senate's amendment and the Commission was continued.[3]

Criticism of the Commission continued both in Congress and in the local and national press. Kate Field, the famous anti-Mormon writer, even joined the critics of the Commission when she wrote that "if there ever was an unnecessary Commission it is that established for Utah. Five Commissioners have for ten years drawn from the Treasury of the United States five thousand dollars apiece yearly for doing next to nothing. . . . The sooner it dies the better."[4] The Deseret News kept up a running fire, describing the Commission's work, especially its reports, as being "dishonest, untruthful, cunning, and full of pettifogging, special pleading, and trickery."[5] It notified all interested readers that it was "ready to vote with both hands . . . in favor of its abolishment."[6]

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[1] Ibid., Part VII, p. 6178-9. [2] Ibid. [3] Ibid.

[4] Deseret Weekly, July 14, 1892.

[5] Deseret News, Sept. 24, 1892. [6] Ibid., Jan. 15, 1894.

In view of such criticism, it is interesting to note that the Commission continued until statehood. Following the passage of the Enabling Act, there seems to be but one excuse for its continuance--that the Democrats, having a majority on the Commission, hoped for political advantage which would bring Utah into the Union as a democratic state.

Evaluation.-- Whether the amount expended to operate the Commission represented a wise investment of national funds is problematical. The answer would depend largely on the attitude taken toward the Mormons and their peculiar institution, and the relative value given to the Commission's efforts in the abandonment of polygamy. These two points of view were well expressed in the debate on the continuation of the Commission, which took place in the Senate in 1892. Senator Orville H. Platt, of Connecticut, insisted that much of the reform which had occurred in Utah had come about as a result of the "creation of the Commission." Senator Wilkinson Call of Florida, on the other hand, insisted that it was not the Commission which has changed polygamy--it was the advance of civilization.[1] In support of either of these arguments, evidence can be marshalled. The fact that polygamy was abandoned during a time when the Commission was active is undeniable. Arguments that it was effective, therefore, have the strength

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[1] Congressional Record, XXIII, Part VI, 5569.

of achievement to support them. Whether the Mormon church would have abandoned the practice of polygamy without the Commission is a matter for speculation rather than proof, but permits of some interesting projections. It is possible, although not provable, that polygamy would have been abandoned within relatively the same space of time had the Commission never been created. It is well known that persecution often breeds belligerence. This was the case with the Mormons. They considered themselves to be unjustly attacked and persecuted by Congressional legislation and thus worked more assiduously than ever to preserve and even propagate their peculiar institution. This reaction may actually have delayed the abolition of polygamy. However, it seems unlikely that without federal "oppression" polygamy would have been totally abandoned as soon as it was. The religious nature of the doctrine, plus its divine sanction, made its abandonment a very difficult thing for many of the leaders and members of the Church. While the friction of civilization would no doubt have had a major effect, and may have greatly reduced the percentage of Mormons involved in polygamy, it is unlikely that it would have accomplished the abolition of the practice as a church doctrine as soon as was achieved under the severe federal laws.

The question yet remains, however, as to the part the Commission contributed to the abolition of the "twin relic."

The evidence, as reviewed in chapter five, seems conclusive that the prescribed role of the Commission--that of the disfranchisement of polygamists--contributed no major discomfort to the leaders or members of the Church; and such a program by itself would probably never have resulted in the abandonment of the practice. However, as will be noted in chapter eight, the effect of the Commission's reports contributed much. Evenso, the total contribution of the Commission was less than that of the courts, including the escheatment of the Church property. Those activities cut near to the heart of the Mormon church and its people. If Congress had failed to create the Commission, but had transfered the $60,000 per year appropriated therefor to be used in an even more vigorous judicial crusade, it is likely that the results would have been equally, if not more, dramatic.

CHAPTER VIII

THE COMMISSION'S REPORTS

As previously reported in chapter two, the provisions of the Edmunds Act made no demand upon the Commission with regard to reporting. Its performance in this area came about as the result of informal instructions which it must have received. The Commission submitted regular annual reports to the Secretary of the Interior from 1882-96. Interim reports were submitted August 31, 1882[1] and April 29, 1884.[2] The Secretary of the Interior, in turn, transmitted the reports to Congress. Each of the reports was composed of two major types of information: (1) a review of the work and accomplishments of the Commission for the year concerned, and (2) recommendations of additional measures which should be enacted for the solution of the Utah problem. The latter of these functions became the most important operation conducted by the Commission. It commenced its activities in this department in its first annual report, November 17, 1882,[3] by informing the Secretary that it had "reason to believe that it is expected by the Executive that this Commission will

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[1] Mess. and Docs., Int. Dept., II (1882-3), 1003.

[2] U. C. Minutes, A, 360-74.

[3] Mess. and Docs., Int. Dept., II (1882-3), 1005-9.

make suggestions as to any additional legislation that may be needed to carry out the principles of the law under which the Commission was organized. In all its reports, the Commission freely made recommendations in regard to any approach which it thought might help in the extirpation of polygamy. A summary of the recommendations of the Commission is shown in table 21 which follows. The broad range of the recommendations, covering in addition to the Commission's regular business, such items as court reforms, issuance of amnesty, granting of statehood, etc., indicates that the Commission considered itself to be the official emmissary of the entire federal government--a sort of general staff, which in addition to administering its own work, was to assess the effect of the various other segments of the attack on polygamy and recommend what additional pressures should be applied.

Not all, or even a majority, of the Commission's recommendations were adopted. This fact, however, should not be assumed to represent the effect accomplished through this medium. The impact the recommendations made resulted as much from the widespread publicity they received and the possibility of their adoption as from the adoptions themselves. Analysis of the effect of the Commission's recommendations in two major areas--the courts and the Church--will illustrate their potency.

TABLE 21

LEGISLATIVE RECOMMENDATIONS MADE BY THE UTAH COMMISSION*

1882

Recommended the following:

1. That Congress enact a marriage law requiring all marriages to be solemnized in certain designated public places, and witnessed by such persons, and registered in such public offices, as to make the proof of marriage morally certain.
2. That the Woman Suffrage provision of Utah law be repealed.
3. That the legal wife be made a competent witness in polygamy prosecutions.

1883

Urged adoption of 1882 recommendations.

1884

Repeated former recommendations, and added the following:

1. That provision be made for a special fund for use of Utah law enforcement officers in suppression of polygamy.
2. That United States Commissioners be given concurrent jurisdiction with justices of the peace in civil and criminal matters.
3. The number of elective offices in the Territory be reduced and the number of officers appointed by the Governor correspondingly increased.
   A. The offices of Territorial Auditor and Treasurer be definitely defined by Congress as being appointive.
   B. Commissioners to Locate University Lands, Probate Judges, County Clerks, County Selectmen, County Assessors and Collectors and County Superintendent of Public Schools be made appointable by the Governor upon the approval of the Utah Commission.
4. That authorization be given for the use of the open venire in selection of jurors.
5. That district courts be given statewide jurisdiction in cases of polygamy.
6. That prosecutions for polygamy be exempt from the operation of the statute of limitations.
7. That a penal offense be provided for any woman who entered into the marriage relation with a man knowing him to have a wife living and undivorced.

1885

Repeated former recommendations, endorsed them, and added the following:

1. That term of imprisonment for unlawful cohabitation be

TABLE 21--Continued

increased to at least two years for the first offense and three years for the second offense.
2. That polygamists be refused homestead privileges or right to settle on U. S. owned land.
3. That an immigration law be passed prohibiting the immigration of those practicing or believing in polygamy.
4. That Congress should consider and possibly adopt one of the following plans for the Government of Utah:
   A. A Legislative Commission.
   B. All elective officers be made appointive by the Governor as approved by the Commission.
   C. The Idaho law disfranchising all Mormons be adopted for Utah.

1886
Noted that practically all former recommendations had been embodied in a bill, S. 10, then before Congress. Suggested its passage, with minor amendments, and added the following:
1. That a constitutional amendment against polygamy be adopted.

1887 (Majority Report)
Repeated former recommendations and urged their adoption along with the following:
1. That as a "matter of great importance" a law be passed conferring upon the Governor the authority to appoint the following county officers: Selectmen, Clerks, Assessors, Recorders, and Superintendents of District Schools.
2. That the Utah Commission and the Secretary of the Territory be constituted a board to redistrict Salt Lake City into aldermanic districts to allow the minority to secure representation in those districts in which they possessed majority.
3. That the Commission tacitly approve a Legislative Commission for Utah.
4. That Utah not be admitted as a state under the constitution drafted in 1887.

(Minority Report)
Noted that the movement for abrogation of polygamy was taking an organized form and the abolition of that institution was almost certain with the passage of time. Opposed "further legislation of a hostile and aggressive character, almost, if not entirely, destructive of local self-government, thereby inflicting punishment on the innocent as well as the guilty." Favored adoption of a constitutional amendment prohibiting polygamy.

TABLE 21--Continued

1888 (Majority Report)
Majority remained unconvinced of major progress toward the abandonment of polygamy. Makes no new recommendations but urged "energetic enforcement of the laws, and the continuation of political disabilities, together with the measures previously recommended."

(Minority Report)
Noted that either "wise leadership or voluntary action of the people" have been asserted in the past 18 months in ways that are commendable. Records the passage by the Territorial Legislature of a comprehensive marriage law which prohibits polygamous marriages. Concludes that "it is obvious that the laws of Congress and of the Territorial Legislature, the officers in charge of the execution of the federal statutes of the people of Utah, including the Gentiles and the monogamous Mormons, with many beneficient influences, such as railroads, telegraphs, schools, colleges and the invincible progress of civilization, are rapidly and surely working out a reformation of the inhibited sexual offenses in Utah; and there does not now seem to be any necessity or propriety for further legislation restrictive of political rights in that Territory."

1889 (Majority Report)
Reiterated former recommendations and urged their adoption in addition to the following:
1. That legislation be passed authorizing the Commission to make new registrations each year.
2. That Congress pass laws for the government and conduct of public schools in Utah.
3. That as soon as the 1890 census is completed the Commission, with the Secretary of the Territory be authorized to redistrict the Territory for legislative purposes.
4. That consideration should be given to the disfranchisement of all members of the Mormon church.

(Minority Report)
Reported that existing laws are working well. Advises that: "Further aggressive legislation trenching upon civil and political privileges would be injurious rather than beneficial. It would be regarded by the people affected as revolutionary and despotic. Savoring, under the circumstances, of persecution for religious opinion, it would provoke resentful feelings, and an obstinate and reactionary mood."

TABLE 21--Continued

1890 (Majority Report)
Urged the enactment of previously recommended reforms and requested:

1. That the powers of the Utah Commission be enlarged to authorize and enable it to issue instruction which shall be binding upon the registrars. That such registrars shall be made penally liable for any willful omission or commission on their part in respect to the discharge of their legal duties.
2. That all members of the Mormon church be disfranchised.

No minority report was submitted in 1890, but Commissioner McClernand refused to sign the majority document.

1891 (Majority Report)
Noted the issuance of the Manifesto by President Woodruff and the dissolution of the People's Party, but observes that many evidences still exist of the lack of sincerity in the steps taken, and the exercise of political control in the Mormon church. While no further recommendations were made by the majority, it informed Congress that it "cannot recommend the withdrawal at this time of any portion of the safeguards thrown around this people by the law making power of the government." The majority was also most emphatic in expressing "its opinion that it would not at this time be safe to intrust to this people the responsibilities and duties of Statehood."

(Minority Report)
Observed many evidences of sincerity and progress. Concluded that "it would not be either just or politic to extend by law the range of existing civil disabilities indiscriminately to all Mormons." Advised "let well enough alone."

1892
Advised the government to "be sure" that affairs have changed in Utah sufficiently to justify either the end of the Commission or the grant of statehood. Noted that on December 19, 1891 the Presidency and Apostles of the Church had appealed for amnesty. Without assenting to all of the statements contained in the appeal, the Commission informed the President that "it would be glad if the relief prayed for could be granted under proper conditions as to future observance of the pledges so solemnly made."

Again Commissioner McClernand failed to sign the report.

TABLE 21--Continued

1893
Contained only one recommendation--that a constitutional amendment be adopted prohibiting polygamy. This report was submitted when it was rather evident that the Enabling Act for Utah would be passed, and the work of the Commission as an instrument of the federal government was fast coming to an end.

Subsequent Reports:
Reports for 1894, 5 and 6 were submitted by the Commission, but are not reviewed here because following the enactment of the Enabling Act, July 16, 1894, the Commission had no mission as an agency of the federal government. Polygamy had been abandoned; amnesty had been granted to polygamists. The Commission continued in office primarily as an agent of the people of Utah with the mission to supervise elections leading to the adoption of a Constitution and admission of Utah to the Union.

*Source: Compiled from Utah Commission Reports, 1892-6--found in Mess. and Docs., Int. Dept. for years indicated.

The effect of the Commission's recommendations on the courts and the judicial crusade.--The recommendations of the Commission with respect to the courts were widely adopted. At the time the Commission undertook its work in 1882, the activity of the courts in relation to polygamy was at a low level. As noted previously, the Commission soon became convinced that the mere enforcement of the political provisions of the Edmunds Act would not effect the desired changes. Therefore, in its report of April 29, 1884 it suggested that "a vigorous enforcement of those provisions of the Act relating to the punishment of the crime of polygamy ought to go

"pari passu" with the execution of those provisions which come under the authority of the Commission.[1] Shortly thereafter, July 2, 1884, Charles S. Zane was appointed Chief Justice of Utah's Supreme Court, and under his administration the "judicial crusade" was launched in earnest.[2] The effect of that crusade increased with the passage of time and eventually formed a most telling attack upon the institution of polygamy. No records have been found which prove that the Commission's recommendation was totally and directly responsible for the judicial crusade, but the fact that it played a major role therein seems evident. The part it played in the expansion and success of the crusade is a matter of record. It conferred periodically with the officials of the court to determine what additional legislation was needed to increase the effectiveness of their work, and following such conferences made recommendations to Congress.[3] One such recommendation was that "provisions be made for a fund, to be furnished by the Department of Justice to the proper legal authorities in the Territory"[4] to assist in the prosecution of polygamy.

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[1] Mess. and Docs., Int. Dept., II (1884), 520.

[2] This topic is discussed in chapter 10.

[3] Mess. and Docs., Int. Dept., II (1884-5), 521.

[4] Ibid., II (1885-6), 889.

This fund was approved by Congress,[1] and soon became known in Utah as the "Spotters Fund." It was allegedly used to pay "informers" who reported to law enforcement agents instances of suspected cohabitation. The great disturbance which such activity created in Utah is described in chapter ten. Suffice it to note here that this activity, growing out of the recommendations of the Utah Commission, had a major impact on the lives of polygamists in Utah, and no doubt contributed greatly to the conditions which climaxed in the Manifesto.

Several other recommendations of the Commission in relation to the courts became a part of the Edmunds-Tucker law; they included: (1) making the first, or legal, wife a competent witness in prosecutions for polygamy, (2) restoring to the first or legal wife the right of dower as at common law, (3) conferring on the United States commissioners concurrent jurisdiction with the justices of the peace in civil and criminal matters, and (4) binding over witnesses on the part of the government in all United States cases to appear and testify at the trials. These provisions made major contributions to the effectiveness of the courts in trials for unlawful cohabitation and polygamy. Particularly potent was the provision making the legal wife a competent witness. The

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[1] 24 Stat. L. 252. The wording of the appropriation read: "To aid in the further and more effectual prosecution of crimes in Utah, five thousand dollars, to be expended at the discretion of the Attorney General."

judicial ethics of that provision are open to censure, but its effectiveness in securing convictions in the situations then existing in Utah is unquestioned.

Another recommendation made by the Commission in 1884, that Congress authorize the use of the "open venire" method of securing jurors, was never enacted into law, but became a part of the procedure in Utah's courts in 1885[1] and was upheld by the Supreme Court.[2] This procedure made possible the empanelling of non-Mormon juries whose predeliction to convict was much greater than their Mormon counterparts.

It is not over complimentary to conclude that the Utah Commission, through its recommendations, contributed indirectly to many of the weapons used in the very successful judicial crusade. The fact that the Commission consistently reported the success of the judicial activities, including the number of indictments and convictions, plus facts on major trials, would almost lead one to believe that the Commission considered the court activities to be a branch of its own work.

The Commission's reports and the Church.--Any recommendations made by the Commission in connection with the institution of polygamy had an effect upon the Mormon church,

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[1] Whitney, op. cit., III, 279.

[2] 114 U. S. 477.

for polygamy was a religious tenet of that body, and the whole polygamy struggle was in reality a struggle to make the laws of the United States supreme over the revelations and directions of the Church of Jesus Christ of Latter-day Saints. The sum total of its recommendations, therefore, may be considered as relating to the Church. Some of them struck directly at the practices of the Church, such as the first recommendation that the Commission made, in 1882, to the effect that Congress pass a law requiring all marriages to be solemnized in certain designated public places.[1] Church teachings had consistently encouraged members to be married in the temples or the Endowment House--places where neither the procedure nor the records were public. This recommendation saw partial fruition in the Edmunds-Tucker Act, which not only required the public recording of all marriages but provided a fine of $1,000 and imprisonment for two years for any official who might perform a marriage and fail to record same. This provision was clearly aimed at those officials of the Church who might perform polygamous marriages, for such marriages were performed almost totally by ecclesiastical authority and in the past had not been legally recorded.

Inasmuch as the Commission's relationships to the Church are more fully covered in chapter 9, further details

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[1] Mess. and Docs., Int. Dept., II (1882-3), 1007.

of that relationship will be omitted here. Suffice it to point out that the two most significant documents involved in the abandonment of polygamy by the Church were direct outgrowths of the Commission's reports. The first of these documents, the famous Manifesto, commences with the following sentences:

> Press dispatches having been sent for political purposes from Salt Lake, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Interior, allege that plural marriages are still solemnized and that forty or more such marriages have been contracted in Utah since last June or during the past year; also that in public discourses the leaders of the Church have taught, encouraged, and urged the continuance of the practice of polygamy;
>
> I therefore, as President of the Church of Jesus Christ of Latter-day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have during that period been solemnized in our temples or in any other place in the Territory. . . .[1]

The immediate cause, therefore, of the issuance of the Manifesto was the 1890 report of the Commission. It is important in this connection to note that President Woodruff did not object to the activities of the Commission in the administration of its regular duties, but he found its report of happenings in Utah adequate occasion for the issuance of one of the most significant documents in the entire history

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[1]Whitney, op. cit., III, 744.

of the Mormon church. Another point should also be emphasized. The power of the Commission's reports lay in the widespread publicity given to their contents. If they reported unfavorable items about the Church, these items were reprinted in the papers of the nation. The public opinion moulding power possessed by the Commission was tremendous.

Another item should also be mentioned with respect to the issuance of the Manifesto. The 1890 report of the Commission not only alleged that polygamous marriages were still being performed, but it recommended that Congress pass a law which would disfranchise all Mormons regardless of their relationship to, or attitude toward, polygamy. The Cullom-Struble Bill, which provided for such disfranchisement was pending before Congress, and had been approved by committees of both Houses.[1] The possibility that it might pass as a result of the Commission's recommendation was no doubt a further consideration in President Woodruff's action.

The second of the significant documents was the Proclamation of Amnesty, issued by President Harrison, January 4, 1893. It will be remembered that on December 19, 1891 the First Presidency of the Latter-day Saints Church and the entire Quorum of the Twelve had petitioned President Harrison for amnesty.[2] No official action thereon had been taken by

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[1] Ibid., p. 743. [2] Roberts, op. cit., VI, 288.

the President at the time the Commission submitted its annual report, September 15, 1892. In that report, the Commission told the President that it "would be glad if the relief prayed for could be granted. . . ."[1] Within less than four months, January 4, 1893, President Harrison issued his famed Proclamation of Amnesty.[2] It is possible that there may have been many reasons for the issuance of the Proclamation at that specific time, other than the recommendation of the Commission. However, the time relationship between the Commission's recommendation and the promulgation of the proclamation, plus the fact that the preamble to that document states that a major reason for its issuance was the recommendations of the Utah Commission,[3] gives strong support to the conclusion that the Commission's action was responsible, at least to a great extent, for the issuance of that historic document.

The role played by the Commission reports in the two events just enumerated, plus the close relationship of the Commission's recommendation and the judicial crusade, is adequate evidence of the tremendous power that the reports wielded--a power far greater than that possessed by the Commission in the regular operation of its functions of disfranchising polygamists.

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[1] Mess. and Docs., Int. Dept., III (1892-3), 467.

[2] Messages and Papers of the Presidents, XIII, 5803-4.

[3] Ibid.

CHAPTER IX

THE UTAH COMMISSION AND THE CHURCH

The passage of the Edmunds Act, with its consequent creation of the Utah Commission and launching of the judicial crusade, was in reality an attack upon one of the doctrines and practices of the Church of Jesus Christ of Latter-day Saints. The purpose of both the Commission and the crusade was to oblige the polygamist members of that Church to live in accordance with the laws of the United States rather than the revelations of their religion. The Mormon church was a compact organization whose members placed great faith in the advice and counsel of their leaders. The official attitudes and actions of the leaders of the Church toward the law and the Commission were therefore most important in determining the response of the members. John Taylor, President of the Church, very quickly established the position of that organization in relation to the Edmunds law in a speech, delivered shortly after the passage of that Act, in which he said:

> We do not wish to place ourselves in a state of antagonism, nor act defiantly towards this Government. We will fulfill the letter, so far as practicable, of that unjust, inhuman, oppressive and unconstitutional law, so far as we can, without violating principle; but we cannot sacrifice every principle of human right at the behest of corrupt, unreasoning and unprincipled men. . . . We shall abide all constitutional law, as we always have done; but while we are God-fearing and law-abiding, and respect all honorable men and officers, we are no craven serfs,

> and have not learned to lick the feet of oppressors, nor to bow in base submission to unreasoning clamor. We will contend inch by inch, legally and constitutionally, for our rights as American citizens.[1]

One of the rights which the members of the Church were determined to maintain was that of majority rule. The Edmunds Act comprised the first real threat to Mormon political dominance that had been faced in many years, and the First Presidency acted to meet and defeat that challenge. In 1882, following the issuance of the Commission's oath, which demanded that all registrants swear that they did not cohabit with more than one woman "in the marriage relation," many monogamist members of the Church were refusing to take the oath and register because they felt the law was unjust, and the oath was illegal. The leaders no doubt agreed with those members as to the characteristics of the oath, but they were also determined to retain Mormon political control which could only be accomplished with a large Mormon registration. To achieve this end, on August 29, 1882 the First Presidency released a lengthy "Address to the Members of the Church of Jesus Christ of Latter-day Saints."[2] That document told something of the background and terms of the Edmunds Act and of the powers of the Commission. It then accused the Commission of illegally prescribing an oath which was not in

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[1] Whitney, op. cit., III, 275.

[2] Deseret News, Aug. 29, 1882.

conformity with the law--which law was itself unconstitutional. In spite of the claimed unconstitutionality of the Edmunds Act and the illegality of the Commission's prescribed oath, the First Presidency faced the existing facts of political life and advised all members of the Church who could truthfully take the oath to do so because "there is no reason we know of in the Gospel, or in any of the revelations of God, which prevents you from doing so." Not only were members advised to take the oath, they were charged with the responsibility to do so. Said the "address":

> You owe it to yourselves; you owe it to your posterity; you owe it to those of your co-religionists who by this law are robbed worse than even many of yourselves; you owe it to humanity elsewhere; you owe it to that free and constitutional form of government, which has been bequeathed to you.[1]

The address then advised the members of the Church to look to the People's Party for guidance in registration and voting. The effectiveness of the First Presidency's appeal was amply demonstrated in that 1882 election. The People's Party rolled up the largest majority in its recent history, in spite of the loss of nearly 12,000 of its voting members.

With regard to the attitude of the Church toward the mission of the Commission, i.e., the abolition of polygamy,

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[1] Ibid.

the first Presidency announced to the world in another section of the "address":

> In regard to our religion, or our eternal covenants, we have no compromise to make nor principles to barter away; they emanate from God and are founded upon the rock of eternal ages; they will live and exist when empires, powers and nations shall crumble and decay; and with the help of the Almighty we will guard sacredly our covenants and maintain our interests and be true to our God while time exists or eternity endures.[1]

A stronger call to arms would be difficult to phrase. It was obvious that the officials of the Church were openly hostile to the work of the Commission and intended to do their best to see its mission fail.

Three significant points were emphasized in the "address": (1) that the Mormons would fight to retain political control, (2) that the Church had no intention of abandoning polygamy, and (3) that the People's Party would be the instrument through which the Church would work to preserve its political dominance. Each of these points, as has been noted, were amply demonstrated in subsequent events.

Evidently the overwhelming victory of 1882 gave the leaders of the Church confidence in the retention of the Mormon political position. Following the promulgation of the "address," the Church made no official pronouncement relative to the Commission until 1885. Of course, through the medium

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[1] Ibid.

of the Church paper, the Deseret News, a steady flow of semi-official commentary on the Commission's actions was maintained.

The Commission, on the contrary, found frequent opportunity to make official anti-Church statements. Starting with its annual report of 1882, it continued thereafter to make an expanding list of recommendations inimical to the position of the Church.[1] None of these, however, made enough effect upon the leadership of the Church to bring about any major change in attitude.

By 1884, the Commission had become so impressed with the "wonderfully superstitious and fanatically devoted" Mormon people, and the uncompromising attitude of the Church leaders with respect to the maintenance of polygamy, that it was forced to report that in spite of the successful administration of the Edmunds law and the disfranchisement of approximately 12,000 Mormon polygamists the effect of such disfranchisement "upon the preaching and practice of polygamy had not been to improve the tone of the former or materially diminish the latter."[2] It observed that the institution "is boldly, defiantly defended and commended by the spiritual teachers, and plural marriages are reported to have increased in number."[3] This increase the Commission attributed to the recent completion of the Mormon temple at Logan, which had

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[1] Refer to table 21.

[2] Mess. and Docs., Int. Dept., II (1884-5), 517. [3] Ibid.

been dedicated with such "great pomp and ceremony" that Mormon fanaticism had been blown into a flame, with a resultant jump in the number of plural marriages.[1] In support of its contention of a continuing and increasing number of polygamous marriages, the Commission had secured reports from its registrars that 196 males and 263 females had entered polygamy since the passage of the Edmunds Act.[2] The Commission admitted that the reliability of its statistics might be open to question, but it had no doubt as to the continued defiant attitude of the Mormon people on the question of polygamy. The Commission's convictions in this regard had been strengthened by the attendance at the trial of Rudger Clawson, on the charge of polygamy and unlawful cohabitation. The Commission reported that Mr. Clawson was a young man of wide acquaintance among the leaders of the Church, and that his marital relationships were no doubt a matter of knowledge to many of them. In spite of this, not one of the several witnesses called, including President John Taylor of the Church, gave any testimony which would incriminate Mr. Clawson. It was not until his second wife was forced to testify that evidence was adduced which convicted him. This event impressed the Commission with the "oneness" of faith among the Mormons in regard to polygamy, as well as their peculiar view of the "higher

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[1] Ibid., p. 518.

[2] Ibid.

law." Mr. Clawson typified that view in his statement at the time of sentencing:

> Your honor, since the jury that recently sat on my case have seen proper to find a verdict of guilty, I have only this to say why judgement should not be pronounced against me. I may much regret that the laws of my country should be in conflict with the laws of God, but, whenever they do, I shall invariably choose the latter. If I did not so express myself I should feel myself unworthy of the cause that I represent.[1]

The Commission reported that the view expressed by Clawson "is in conformity with the uniform sentiments of all the Mormon people,"[2] thereby admitting that as of 1884 they had failed to shake either the leadership of the Church or the membership thereof from their determination to adhere to the laws of God, even if it required violation of the law of the nation.[3]

Following the Clawson case, the judicial crusade so increased in intensity that many of the leaders of the Church went "on the underground" to avoid prosecution. Included in this number was President John Taylor. He gave his last sermon February 1, 1885, in which he counselled the members

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[1] Mess. and Docs., Int. Dept., II (1884-5), 520.

[2] Ibid.

[3] It was such a conviction on the part of the Commission that had led it to recommend increased judicial activities to supplement its own efforts. The Clawson case was the start of that expanded judicial program which soon was given the name by the Mormons of the "judicial crusade."

of the Church to be patient, to restrain themselves, and commit no violence, but "to evade the law," which he felt was not only unjust and unconstitutional but, in the hands of officials sent to enforce it, was being wrested from its letter and purpose and made more oppressive than its makers designed.[1] He never again made an appearance at a conference of the Church, dying in exile Monday July 24, 1887.[2]

The exile of the leaders of the Church did nothing to improve the attitude of the Mormons toward the Commission. At the April conference in 1885, an epistle sent by the First Presidency, from their place in hiding, to the members of the Church was read. It defended plural marriage as a religious institution, approved and commanded by the Almighty, and cited the constitutional guarantees against governmental interference with religion.

Following the reading of the epistle, Apostle Heber J. Grant arose and moved that a committee be appointed to draft a series of resolutions and a protest to the President of the United States and to the nation "in which the wrongs which the people of this Territory have suffered and are still suffering from tyrannical conduct of federal officials shall be set forth specifically and in detail."[3] The motion was

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[1]Whitney, op. cit., III, 585. [2]Ibid.

[3]Ibid., p. 356.

adopted and a committee appointed to draft the proposed protest.[1] On May 2, 1885 mass meetings were held throughout the Territory to ratify the document titled "Declaration of Grievances and Protest." The master meeting was held in the crowded Tabernacle in Salt Lake. There the "Declaration" was read by Orson F. Whitney, who reported that during the reading nearly every sentence was punctuated with applause and the document was adopted unanimously.[2] It contained a wide range of materials, including bitter complaint against the conduct of the judicial crusade. Specifically, with respect to the Utah Commission, it charged that the Commission had grossly abused the authority conferred upon it and had assumed to exercise important legislative and judicial functions by: (1) officiously formulating an unauthorized and illegal expurgatory test oath which discriminated against Mormons only, (2) illegally promulgating "rules and orders which in effect materially changed existing laws," (3) exercising "the highest order of judicial authority" by declaring acts of the legislature invalid, (4) grossly abusing their

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[1]Committee was composed of John T. Caine, Wm. Jennins, Feramorz Little, James Sharp, Heber J. Grant, John W. Taylor, Orson F. Whitney, John Q. Cannon, Junius F. Wells, Charles O. Card, Abram Hatch, Wm. W. Cluff, Willard G. Smith, Lewis W. Shurtliff, Oliver G. Snow, Thomas G. Webber, Franklin S. Richards, Samuel R. Thurman, Joel Grover, Rees R. Llewellyn, B. H. Roberts, and Joseph Kimball. See Whitney, op. cit., III, 356.

[2]Ibid., p. 384.

authority by appointing anti-Mormon registration personnel, and (5) presuming to advise the President and Congress as to the kind of legislation deemed necessary for the suppression of polygamy. In summary, the document charged that the members of the Commission had shown "themselves the pronounced enemies of the Mormon people."[1] That the Commission had not yet won the affection of either the leadership of the Church or its members was obvious.

The protest was presented to President Cleveland, May 13, 1885, by John T. Caine, John W. Taylor and John Q. Cannon.[2] No direct result of the petition was reflected in either the composition or policies of the Commission, unless it was to make the Commission itself even more determined as indicated in its 1885 report. In that document, although the Commission did not refer directly to the "Declaration," it informed Congress that:

> The declaration often repeated during the past year by the chief officers of the church, that it is their settled determination to refuse obedience to the law; the persistent use of their great power and influence to defeat all efforts from within as well from without the church to put an end to polygamy, and their persecution of those of their own number who have signified their desire to obey the law, have convinced us that some more decisive plan to reduce the power of the polygamic element, and to correspondingly increase that of the Federal authority in the civil government of Utah, should be presented to Congress at this time for its consideration.[3]

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[1] Ibid., p. 382. [2] Ibid., p. 385.

[3] Mess. and Docs., Int. Dept., II (1885-6), 890.

The Commission then offered, for the consideration of Congress, three plans: (1) the creation of a legislative commission to exercise full governing powers in Utah, (2) provision that all presently elective officers be made appointive by the Governor, subject to confirmation by the Commission, and (3) the adoption of the Idaho test oath which disfranchised all Mormons. The severity of these recommendations would make it appear that the Commission was definitely piqued at the official Church criticism of its conduct.

The increased intensity of the judicial crusade, during 1885 and subsequent years, so demanded the attention of the Mormon people that the Commission's administrative activities became a secondary element in the struggle, and no official Church comment thereon was made. The continued anti-Church recommendations of the Commission, however, made heavy contributions to the passage of the Edmunds-Tucker law. Even the severity of that law did not sufficiently humble the Mormons to satisfy the majority of the Commission, for in its 1887 report it told Congress that "standing face to face with the law, the leaders and their obedient followers have made no concession to its supremacy, and the issue is squarely maintained between assumed revelations and the laws of the land."[1] The minority of the Commission, however, found that

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[1] Ibid., II (1887-8), 1330.

there were definite signs that the movement for the abrogation of polygamy was taking an organized form, and the abolition of that institution was almost certain with the passage of time.[1] This difference of interpretation as to the attitude of the Church toward the abolition of polygamy split the Commission into two factions for the next five years. The majority remained suspicious that any move toward the disavowal of polygamy was but a ruse; the minority were convinced that the process was genuine and honest. From the vantage point of today, the minority has been shown to be much more accurate in its interpretation of trends. The climax of the Commission's anti-Church recommendations were contained in the majority's 1890 report. At that time, the Church was nearly prostrate from the combined effects of the judicial crusade and the escheatment of church property under the provisions of the Edmunds-Tucker law. Many of the Church officials were still in hiding; others were serving prison sentences. For some time, approval for the performance of polygamous marriages had been withdrawn, and the leadership of the Church had refrained from preaching polygamy. In addition, the Cullom-Struble bill, which provided for the total disfranchisement of all members of the Church, was pending in Congress. Under such circumstances, the 1890 report contained two

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[1] Ibid., p. 1347.

particularly potent items. The first was the charge that polygamous marriages were still being performed in the Territory, and that since 1889 forty-one males, and an equal number of females, had entered into the polygamic relation. The second was the recommendation that Congress enact a law disfranchising all Mormons. That the adoption of the last proposal would be a crowning blow to the Mormon people was readily conceded. The report was dated August 22, 1890. Even before a complete copy thereof had been received in Salt Lake, the press associations carried stories on its contents, and nation-wide publicity had been given thereto. The exact chain of events which transpired immediately thereafter is not known;[1] but by September 24 Wilford Woodruff had concluded that, for

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[1]Frank J. Cannon, Under the Prophet in Utah (Boston, Mass: C. M. Clark Publishing Company, 1911), pp. 83-111. Mr. Cannon gives an interesting account of the part which he supposedly played in this dramatic episode. Unfortunately he gives no dates and therefore leaves the sequence of events jumbled. His account relates that when the passage of the Cullom-Struble bill seemed imminent he was requested to go to Washington to assist in the fight against it. Being a Republican it was thought that his influence with the Republican administration would be effective. He secured an interview with Secretary of State James G. Blaine, who agreed to lend his support to the defeat of the bill upon the assurance that the Mormons would do something to place themselves in line with the law. Through Mr. Blaine's influence and Mr. Cannon's appearances before the committees of Congress, Mr. Cannon claims that he secured assurances that the measure would be held up for a while until the Church had time to take some action. Returning to Salt Lake, Mr. Cannon reported the events of his Washington soujourn to President Woodruff who told him that he had been seeking the mind of the Lord in the matter. Later Cannon states that he attended a meeting in which President Woodruff presented the Manifesto and received the support of leaders of the Church in its issuance.

the temporal salvation of the Church, polygamy must be abandoned. On that date, he caused the following to be dispatched to the Associated Press in Chicago:

> To Whom It May Concern:
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> Press dispatches having been sent for political purposes from Salt Lake City, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Interior, allege that plural marriages are still being solemnized and that forty or more such marriages have been contracted in Utah since last June or during the past year; also that in public discourses the leaders of the Church have taught, encouraged and urged the continuance of the practice of polygamy;
>
> I, therefore, as President of the Church of Jesus Christ of Latter-day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have during that period been solemnized in our temples or in any other place in the Territory.
>
> One case has been reported, in which the parties alleged that the marriage was performed in the Endowment House, in Salt Lake City, in the spring of 1889, but I have not been able to learn who performed the ceremony; whatever was done in this matter was without my knowledge. In consequence of this alleged occurrence the Endowment House was, by my instruction, taken down without delay.
>
> Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and to use my influence with the members of the Church over which I preside to have them do likewise.
>
> There is nothing in my teachings to the Church or in those of my associates, during the time specified, which can be reasonably construed to inculcate or encourage polygamy, and when any Elder of the Church has used language which appeared to convey any such teaching he has been promptly reproved. And I now publicly declare that my advice to the Latter-day

Saints is to refrain from contracting any marriage forbidden by the law of the land.

Wilford Woodruff,
President of the Church of Jesus Christ
of Latter-day Saints.[1]

A few days later, October 6, in the general conference of the Church, the Manifesto was read and approved by the assembled throng[2]--thereby giving the sanction of the Mormon people to the action of their president. A historic moment in the history of the Church had transpired. It had capitulated to the "majesty of the law" and ceased its fight to maintain its divine ordinances in opposition thereto.

From the passage of the Morrill Act in 1862 to the issuance of the Manifesto in 1890, the Church of Jesus Christ of Latter-day Saints had successfully maintained its peculiar doctrine. Its capitulation came only after a valiant and determined struggle, and long and "earnest prayer before the Lord" by President Wilford Woodruff.[3]

The fact has already been noted that the majority of the Commission doubted the sincerity of the Manifesto and recommended that the government proceed with caution. However, the sincerity of the Church was proved. Old political

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[1]Deseret News, Sept. 25, 1890.

[2]Roberts, op. cit., VI, 220.

[3]Whitney, op. cit., III, 747.

alignments were abandoned in favor of national parties, and by 1892 even the majority was so convinced that it recommended the granting of amnesty.

CHAPTER X

THE UTAH COMMISSION AND THE JUDICIAL CRUSADE

By three significant actions in April of 1884, the Utah Commission became the indirect sponsor of the judicial crusade: (1) upon its "earnest request," Mr. William H. Dickson was appointed U. S. District Attorney,[1] (2) in a special report dated April 29, 1884,[2] the Commission told Congress that a rigorous enforcement of the law should accompany the Commission's work, and (3) recommended that a special fund be provided for use of legal authorities in Utah in apprehending violators of the Edmunds law. Directly thereafter, July 2, 1884, Charles S. Zane was appointed Chief Justice of Utah's Supreme Court and assigned to preside over the Third District Court at Salt Lake.[3] Until the time that Dickson and Zane took office, the number of successful prosecutions for polygamy, bigamy, or unlawful cohabitation had been nominal as indicated in table 22. The vigorous prosecution of Attorney Dickson and the rigid interpretation of the law by Judge Zane soon made momentous changes.

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[1] Mess. and Docs., Int. Dept., II (1885-6), 887.

[2] U. C. Minutes, A, 360-74.

[3] Whitney, op. cit., III, 282.

TABLE 22

CONVICTIONS FOR POLYGAMY AND UNLAWFUL COHABITATION*

Year	Polygamy	Unlawful Cohabitation	Year	Polygamy	Unlawful Cohabitation
1875 ..	1	.....	1886 ..	4	123
1876 ..	.....	.....	1887 ..	4	228
1877 ..	.....	.....	1888 ..	1	107
1878 ..	.....	.....	1889 ..	6	294
1879 ..	1	.....	1890 ..	10	101
1880 ..	.....	.....	1891 ..	3	72
1881 ..	.....	.....	1892 ..	0	37
1882 ..	.....	.....	1893 ..	.....	.....
1883 ..	.....	.....	1894 ..	.....	.....
1884 ..	1	3	1895 ..	.....	.....
1885 ..	2	39	1896 ..	.....	.....

*Source: Compiled from the Utah Commission Reports.

Until the passage of the Edmunds law, the only charge which could be brought against those guilty of plural marriage was that of polygamy or bigamy. Under such charges, convictions had proven to be almost impossible to obtain due to the difficulty of securing evidence of the polygamist marriage and the predeliction of Mormon jurors to acquit. However, the Edmunds law greatly facilitated the prosecution of those involved in polygamy by: (1) providing a new misdemeanor--that of unlawful cohabitation, (2) excluding from juries trying polygamy or unlawful cohabitation cases, all persons who either practiced polygamy or "believed" its practise to be right, and (3) allowing the joining of counts for polygamy,

bigamy, or unlawful cohabitation in one information or indictment. Under this law, polygamy and bigamy remained as impossible to prove as previously; therefore, the newly created charge of unlawful cohabitation became the most active tool of the court.

The success of the crusade depended on four major achievements under Judge Zane and Mr. Dickson. These were: (1) development of a process which assured non-Mormon or anti-Mormon jurors, (2) securing evidence, and consequent indictment against a large number of polygamists, (3) development of a definition of "unlawful cohabitation" which was sufficiently broad to permit easy conviction, and (4) the application of the doctrine of segregation. Each will be briefly reviewed.

Selection of juries.--The Poland Law, enacted in 1874, established a unique system of securing jurors in Utah.[1] To assure that at least half of the jurors would be Gentiles, that law had provided that the clerk of the District Court, who would most always be a non-Mormon, and the judge of probate, who most always would be a Mormon, were to select, annually in January, the jury list in the following manner:

> Said clerk and probate judge shall alternately select the name of a male citizen of the United States who has resided in the district for the period of six months next preceding, and who can read and write the

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[1] 18 Stat. 254.

> English language; and, as selected, the name and residence of each shall be entered upon the list, until the same shall contain two hundred names.

Under this plan, the clerk of the court usually selected non-Mormons; the judge of probate, Mormons--thereby assuring a balance of Mormon and Gentile jurors. However, the provision of the Edmunds law which made ineligible for jury service all persons who "believed polygamy to be right," made the elimination of most Mormons almost automatic. This situation led to an interesting and significant development in the judicial crusade. In selecting the grand jury for the September 1884 term of the court, the first at which Judge Zane had presided, rigorous examination by the District Attorney succeeded in the elimination from that grand jury of all but one Mormon. This process exhausted the jury list. The District Attorney moved that Judge Zane issue instructions to the U. S. Marshal for an open venire. This order, if issued, would permit the Marshal to select at his discretion, from among the body of the citizenry, additional jurors. After Judge Zane had heard extended argument by a number of attorneys on the point--some arguing in favor of such procedure, and others in opposition--the Judge rules that an open venire should issue.[1] The Marshal, being non-Mormon selected all non-Mormon jurors, from among whom the jury was completed.

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[1]Whitney, op. cit., III, 289.

The grand jury was composed, therefore, of all non-Mormons but one, and he a disbeliever in polygamy. The jury, thus selected, issued an indictment against Mr. Rudger Clawson on two counts--one, for polygamy; and the other for cohabiting with more than one woman.[1] The petit jury which tried him was also selected by open venire.[2] A verdict of guilty was returned on both counts.[3] Appeal was immediately taken to the Utah Supreme Court, which affirmed the action of the District Court, and further appeal was taken to the Supreme Court of the United States, where the case was argued April 8, 1885. On April 20, that Court handed down its decision affirming the use of the open venire method. The reasoning used to substantiate this ruling was that the exhaustion of a jury list should not cause the courts to cease to function. Courts were required by law to hold sessions at prescribed times; and they, therefore, had the inherent powers to make necessary arrangements for such session if the law failed.

Point number one in the expanded judicial crusade had now been achieved--non-Mormon juries became the order of the day.

Securing of evidence of cohabitation.--The normally secretive nature of the Mormon marriage system, plus the added precautions taken by polygamists since the enactment

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[1] 114 U. S. 482. [2] Ibid., p. 484. [3] Ibid., p. 478.

of the Edmunds Act, made the procurement of evidence of cohabitation difficult. The U. S. Marshal, with a comparatively small staff of deputies, was handicapped in obtaining evidence against many polygamists because of the fact that his men were well known. The deputies had become pariah's of Mormon society--they were watched constantly, and word of their movements proceeded them to permit any possible victims to escape. This situation caused District Attorney Dickson to appeal to U. S. Attorney General Brewster, under date of August 26, 1884, for a special fund to be used for the payment of a secret detective agency in Utah. The Attorney General allotted six hundred dollars.[1] The success achieved with this small allotment led U. S. Marshal Ireland to renew the plea for a larger fund, November 2, 1885.[2] The Commission lent its support to such a fund in its recommendations of 1884 and 1885.[3] In 1886, the Congress officially approved such expenditures by appropriating five thousand dollars "to aid in the further and more effectual prosecution of crimes in Utah . . . to be expended at the discretion of the Attorney General."[4] With these funds the Marshal was enabled to hire

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[1] Dwyer, op. cit., p. 234.

[2] Ibid., p. 237.

[3] Mess. and Docs., Int. Dept., II (1885-6), 889.

[4] 24 Stat. 252 (1886).

a large number of unidentified "spotters," whose mission was to discover and report instances of polygamist cohabitation. Their activities became the bane of the polygamists existence,[1] and frequent arrests were made. The means of collecting evidence of unlawful cohabitation was now available to the courts.

Expanded definition of unlawful cohabitation.--The arrest of many persons charged with unlawful cohabitation would have availed little, however, unless a means were at hand for their conviction. Zane and Dickson were evidently

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[1]Whitney describes the effect of the "spotters" activities:

"With this money an army of deputy marshals was employed, and a hateful system of espionage was inaugurated. Paid informers, both men and women, were put to work to ferret out cases of polygamy. Some of these assumed the roles of peddlers, some of tourists. Others of tramps, and insinuated themselves into private dwellings, relying upon their impertinent inquiries and the gossiping propensities of the inmates of the homes desecrated by their presence, to elicit desired information. . . . Little children, going to or returning from school, would be stopped upon the streets by strange men and women and interrogated respecting the marital relations of their parents. At night dark forms could be seen prowling about the premises of peaceable citizens, peering into windows or watching for the opening of doors through which to obtain glimpses of persons supposed to be inside. Some of the hirelings were bold enough, or indecent enough, to thrust themselves into sick-rooms and women's bed-chambers, rousing the occupants from slumber by pulling the bedclothes off them. Houses were broken into by deputy marshals armed with axes. Delicate women, about to become mothers, or having infants in arms, would be roused from rest at the most unseemly hours, driven long distances through the night, in vehicles filled with profane and half drunken men, and arraigned before U. S. Commissioners. . . . 'Hunting cohabs' to use the vulgar parlance of the times--was the most lucrative employment of the hour; and one in

familiar with the old saw, "necessity is the mother of invention," for they proceeded to develop a definition of the term so broad that successful prosecution of almost every polygamist brought before the court was assured. The definition of cohabitation, in general use at that time, required the proof of sexual intercourse.[1] This interpretation did not meet the needs of the crusade, for it will be remembered that at the time of the passage of the Edmund's law many of the leading Mormons, in order to comply with the provision thereof, had ceased to live with more than one wife. In fact, some had ceased to live with any of their wives in the normal marital relationships. They had, however, continued to recognize the women concerned as their wives, to support them and their families. Finding the proof of sexual intercourse in such cases impossible, Dickson adopted a new technique which was first used April 27, 1885 in the trial of Angus M. Cannon, a high ranking Mormon churchman.[2] Mr. Cannon, an admitted polygamist, was one of those who had adopted the procedure mentioned above and pleaded "not guilty" to the charge of unlawful cohabitation. At the opening of the trial, the District

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which some of the most disreputable persons in the community zealously engaged. Twenty dollars per capita, for each polygamist arrested, was the ordinary price paid to these mercenaries." See Whitney, op. cit., III, 332.

[1] U. S. v. Clawson, 114 U.S. 482.

[2] 4 Utah Reports 122.

Attorney stated that he did not intend to prove actual sexual intercourse, for such proof was unnecessary. It was sufficient to substantiate the charge of cohabitation to show that a man lives in the same house with two women whom he admits to be his wives.[1]

This interpretation was immediately challenged as being in conflict with the definition of Judge Zane in the Clawson case. The Judge had then defined cohabitation as "the living together of a man with a woman as husband and wife, or under circumstances as induce a reasonable belief of the practice of sexual intercourse."[2] The point was opened to argument; and after hearing both sides fully, Judge Zane ruled that, eventho he had been quoted correctly, he was now of the opinion that the existing circumstances in Utah entitled the court to frame its own definition, which he did in the following words: "It is not essential to constitute an offense against this law to show sexual intercourse. It is sufficient to show that a man lives with more than one woman, cohabits with them and holds them out to the world as his wives."[3]

A short time later the definition was refined to the point that if a man held "out to the world two or more women as his wives" he was guilty of unlawful cohabitation, regardless of whether he lived with them in the same house, kept them in separate houses, or took any step short of completely

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[1] Ibid. [2] 114 U.S. 482. [3] 4 Utah Reports 122.

severing the husband-wife relationship.[1] Under this definition, cohabitation was not difficult to prove and the numerous arrests from information given by "spotters" resulted in the large number of convictions; in fact, conviction was a matter of course under the circumstances. But fines and imprisonment did not seem to materially change the attitude of the Mormon people. If anything, it solidified them in their resistance.

Segregation.--Finding that few would "obey the law," the court officials evidently determined that the penalties were too light and set about to frame an interpretation which would increase their severity. Under the terms of the Edmunds Act, the maximum sentence for the misdeamor of "unlawful cohabitation" was a fine of $300, or imprisonment for six months, or both. Most convicted persons, eventho sentenced to "both," preferred to accept this penalty rather than to give up their plural families. Some had served the designated term of imprisonment, paid their fine, and were again free. The Court met this situation by adopting the doctrine of "segregation." That is, it determined that unlawful cohabitation was not a "continuous" crime which could be punished only once, but that it was a crime which could be segregated into various periods, such as several months, several weeks, or several days. This doctrine permitted a large number of indictments

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[1] U. S. v. Musser. 4 Utah Reports 154.

to be brought against individuals in the first instance, and re-indictment any number of times. This doctrine was first enunciated September 16, 1885, in the trial of Apostle Lorenzo Snow. Judge Powers, of the Utah Supreme Court, summarized it:

> An indictment may be found against a man guilty of cohabitation, for every day, or other distinct interval of time, during which he offends. Every day that a man cohabits with more than one woman . . . is a distinct and separate violation of the law, and he is liable for punishment for each separate offense.[1]

The severity of punishment under such a rule knew practically no bounds. The Deseret News caustically pointed out that the way had been opened to have polygamists indicted, tried, and convicted daily (Sunday excepted.) "Thus they would be fined $93,900 in one year, and during the same period be sentenced to imprisonment for 156 years and six months."[2]

Immediate steps were taken to secure a decision of the Supreme Court regarding the segregation doctrine, but such decision was not made until February of 1887 when the Supreme Court overthrew it and ruled that cohabitation was a continuous offense.[3] In the meantime, however, a great many people had received "segregated" sentences; many others, including the entire First Presidency of the Latter-day Saints Church, had gone into voluntary exile.

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[1] 4 Utah Reports 280. [2] Ibid.

[3] 118 U. S. 346.

Under these strained definitions of the law, the judicial crusade proceeded and created for the Mormon people one of their severest trials. The passage of the Edmunds-Tucker Act, in 1887, added two new tools to those already in use by the courts. It made the lawful husband or wife a competent witness in court and permitted the legal attachment of witnesses without subpoena. The arsenal of the crusade was now full and the results are indicated in the 1887 conviction figures shown in table 22. That both the interpretation and provisions of the laws strained the basic concepts of American jurisprudence is obvious. But under the circumstances then existing in Utah, they were permitted to operate to the increasing discomfiture of the entire Mormon people, both polygamist and monogamist.

The vigor of the crusade was abated in 1888 by the fact that Democratic President Grover Cleveland, following extensive Mormon importunings,[1] replaced Judge Zane with Judge Elliott Sanford of New York, who took a less violent view of the law.[2] News of the abatement soon reached those on the underground and many voluntarily surrendered, declared their guilt, and received Judge Sanford's milder sentences.[3]

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[1]Cannon gives an interesting account of the political maneuvering which went into the appointment of Judge Sanford. See Cannon, op. cit., pp. 53-65.

[2]Whitney, op. cit., III, 633. [3]Ibid., p. 634.

Although Judge Zane was restored to the bench May 10, 1889, the crusade never again achieved its former vigor,[1] and receded into modest proportions with the adoption of the Manifesto. Its death came with the issuance of amnesty by President Harrison, January 4, 1893.

Through the instrumentality of the crusade, the polygamist Mormons had been made to suffer imprisonment or exile of both for their continued insistence on the maintenance of their religious practices in opposition to the law. The heartache and suffering occasioned by the crusade cannot be measured, but the fact that it contributed greatly to the abandonment of the practice of polygamy by the Church of Jesus Christ of Latter-day Saints is plain.[2] The fact that the crusade had its inception, at least partially, in the actions of the Commission, and that it received the full cooperation of that body, made the Commission a full partner with the courts in the judicial crusade.

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[1] Ibid., p. 670.

[2] For a good description of the impact of the "crusade," see Whitney, op. cit., III, 505-609. Pages 643-9 contain a long list of those convicted of polygamy and unlawful cohabitation. Included in the list is the name of the author's great grandfather, Henry Grow. See p. 645.

CHAPTER XI

SUMMARY AND EVALUATION

Creation and purpose.--The Utah Commission, created after twenty years of sporadic legislative effort in opposition to polygamy, was one of the unique experiments in the history of public administration in the United States--unique, if for no other reason than that of its goal, the extirpation of polygamy. Its specifically stated statutory powers were restricted to the supervision of elections in Utah for the purpose of excluding from voting and office holding all polygamists, bigamists, and those cohabiting with more than one woman. The hope of its creation, however, was that the application of the aforementioned political disabilities upon the polygamists, particularly the polygamist hierarchy of the Mormon church, would destroy the political dominance of that group and thereby hasten the abolition of polygamy. Stated another way, its mission was to assist in securing from the Mormon people of Utah obedience to the federal law prohibiting the practice of polygamy, rather than to revelations claimed by the Church of Jesus Christ of Latter-day Saints to give divine admonition to that practice.

Achievements.--The statutory powers of the Commission were administered with a rather high degree of efficiency, with the consequent result that practically all polygamists

were excluded from voting or officeholding. However, it was soon discovered by the members of the Commission that even though few, if any, polygamists voted or held office, such fact resulted in practically no diminution of actual political control by the polygamists, nor did it seem to have any appreciable negative effect upon the institution of polygamy itself. The preaching and practice thereof continued unabated. Within two years of the start of its work, the Commission became convinced of the practical impossibility of suppressing polygamy through the disfranchisement of those engaged in that practice. It therefore recommended to Congress that a strict enforcement of the penal provisions of the anti-polygamy laws should accompany the political sanctions administered by the Commission. Following its recommendation, there began in Utah a much more vigorous enforcement of the anti-polygamy laws, which program soon bore the name of the "judicial crusade." The Commission cooperated closely with the officials engaged in law enforcement and court activities and frequently commended their efforts to Congress. Furthermore, it recommended, after consultation with officials of the courts, additional legislation to increase the efficiency of the "crusade." However, it did not confine its recommendations even to the area of the "crusade" but considered its responsibility to extend to the recommendation of any legislation or executive action which might

benefit the anti-polygamy drive. Through this activity, as reporter to the nation, the Commission accomplished some of its most effective work. The activities of the Commission, therefore, can be classified in three major areas: (1) the exclusion from voting and from office of all polygamists, bigamists, and those cohabiting with more than one woman, (2) cooperating closely with the officials participating in the judicial crusade, and (3) reporting to the nation conditions in Utah, and recommending additional legislative or executive action which it thought desirable.

In summarizing the accomplishments of the Commission, it is difficult to make definite conclusions. It worked in an atmosphere which saw such an interplay of different forces that evaluation of the exact effect of any one of them including the Commission's activities, is difficult. However, the Commission must be given credit for the following:

1. It was directly responsible for the almost total exclusion from voting or holding office of those excluded from the exercise of those political privileges by the Edmunds Act. In performing this activity the Commission reported that it excluded approximately 12,000 such persons.

2. Through the instrumentality of its reports and recommendations, the Commission successfully sought the creation of the judicial crusade, with which it cooperated closely by recommending additional legislative enactments to make the crusade more effective.

3. Under its administration there was a substantial increase in Liberal voting strength. The first Liberal to win a major Utah office was Mr. D. C. McLaughlin of Park City who was elected to the

Legislative Assembly in 1885. Each succeeding election saw additional Liberal representation in Utah's legislature. In the metropolitan municipalities there was also a large gain in Liberal strength culminating in the victories in the Ogden and Salt Lake municipal elections for 1889 and 1890 respectively. The degree to which these victories can be attributed to the Commission's actions, or to fraud by its appointed election personnel, is impossible to assess accurately. But it is likely that without the presence of the Commission, which turned a friendly ear to the Liberal cause and appointed a preponderance of Liberal election personnel, the victories cited would not have come so soon.

4. Partially as a result of its reports to Congress, which were given wide press coverage, the nation remained acutely aware of the "Mormon problem," and Congress was led to adopt the Edmunds-Tucker Act with its harsh provisions--the administration of which brought severe hardship upon the polygamist members of the Mormon church and threatened the existence of the Church organization as such.

5. Largely as a result of its recommendation, President Harrison issued his proclamation of amnesty to the Mormon people.

6. Its 1890 report was cited as the direct cause for the issuance of the Manifesto. wrong

7. During its administration Utah changed from a territory with overwhelmingly Democratic leanings to one which came into the Union with a Republican state administration. The amount of influence exercised by the Commission in this transition is problematical. The fact that its membership was dominated for almost equal periods of time by Democrats and Republicans would lead one to conclude that its operations would have favored each party equally and therefore would have had little effect in swinging the balance of political opinion one way or the other. However, the fact that the Liberal Party, which was favored by both Democratic and Republican Commission members, was generally Republican in national politics, may have given that cause a great boost. But regardless of whether the Commission's contribution was

> large or small, the fact remains that during its tenure such a shift of political opinion did occur, thereby fulfilling the prediction of Senator Brown of Georgia, who charged in the original debates on the Edmunds bill that the purpose of that measure was to seize Utah for the Republicans.[1]

This summary of the Commission's accomplishments again illustrates that a major portion of its success resulted from its activities in the area of reporting.

Administrative highlights.--In the realm of the Commission's administrative activity, the following points merit comment:

1. In the area of its assigned mission, the supervision of Utah elections, the Commission experienced little administrative difficulty until 1885. The Murphy v. Ramsey ruling of that year placed it in a difficult administrative situation because that case ruled that the Commission lacked the power to direct the activities of its appointees. However, it met this problem rather well by substituting for legal supervisory authority its power of removal. Only briefly, in 1890, did it lose practical control of the registration personnel. At other times during its administration it managed to secure a rather high degree of compliance with its wishes.

2. With regard to the internal operations of the Commission itself, there appeared to be a rather high degree of unity until after the passage of the Edmunds-Tucker Act. Then the majority of the Commission unprophetically continued to see the need for additional anti-polygamy measures, while the minority accurately sensed the impending dissolution of the institution of polygamy. This schism divided the Commission until 1892 when that body became primarily a Utah institution with

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[1] Congressional Record, 47th Cong., 1st Sess., XIII, 1208.

all Utah residents as its members. Thereafter, the fight was not so much against polygamy and the Mormons, but between the Democrats and the Republicans for control of the about to be admitted state.

3. The work load of the Commission was not heavy. In fact, most of the time it appears that the Commission was amply, if not over paid, for its services.

4. The Commission worked with critical factions on either hand and never completely satisfied either of them for any extended period. This fact indicates that the actions of the Commission fell somewhere between the extremes demanded by leaders of either faction. Generally, however, its actions were more favorable to the Gentiles than to the Mormons.

5. The expenses of elections under the Commission were considerably higher than under local administrative control.

Public Administration lessons.--In evaluating the work of the Utah Commission, and applying the experiences of that body to the general field of public administration and politics, the following observations seem to have merit:

1. The fact that the Utah Commission efficiently excluded polygamists from voting and from holding office, without major deliterious effect upon either the preaching or practice of polygamy, demonstrated that it required more than the imposition of political disabilities to force the Mormons to give up practices or principles held with deep religious attachment. If this particular instance might safely be given any general application, it ought to caution those who plan campaigns for the democratization and westernization of other areas of the world not to expect great transformations from long established practices and beliefs merely as a result of propaganda, promises, or moderate sanctions. Furthermore, it must be realized that the nature of the practice which is to be changed has little effect upon the

tenacity with which it will be held. Practices, to the American mind the most odious, will probably be held with a surprising tenacity, just as the Mormons stoutly supported their practice of polygamy against the strong moral convictions of most of the nation. It would seem, therefore, that conversion to the democratic philosophy of thoroughly indoctrinated Communists will likely require more than illustrations of the beauties of democracy; the French will probably need more than Marshal Plan aid to conquer their deep rooted fear of Germany.

2. Federal control of elections, as demonstrated in the administration of the Edmunds Act, can be used to influence political trends in the states and territories. If the Congress ever decided to take action to influence state procedures through the power it possesses to "make or alter" state election regulations[1] covering federal officials, it is likely that it might effectuate substantial changes, both administratively and politically. Such action could wield heavy influence on the success of the parties concerned both in relation to state and federal elections, just as the Utah Commission aided the Liberals. The possibilities of such influence would seem to the author to indicate that the federal government should remain out of that field of activity.

3. The Utah Commission's experience demonstrated that centralized election administration, even if controlled within a state, would offer both assets and liabilities. On the asset side of the ledger it would make possible: (1) more uniformity of election administration, (2) central availability of election statistics, (3) greater efficiency of election administration, if tenure were granted to election personnel, (4) more comprehensive registration programs might be encouraged. On the liability side of the ledger, the Utah Commission's experience indicated the following: (1) local majority groups resent the interference of "foreign" election authority, and local election administration is a strong plank in the platform of local self government, (2) expenses of centralized administration would be greater, (3) control of the election machinery by one party would allow that

party considerable advantage in the elections, both because of the patronage available and the possibility of the manipulation of the balloting or counting. It seems to the author that the Utah Commission's experience argues against the centralized control of elections.

4. The Utah Commission's experience reemphasized the fact that when a government undertakes to change a religious conviction and practice it must be prepared for strong resistance on the part of those holding the conviction. That the government possesses adequate power to accomplish the suppression of unwanted practices seems to be undoubted, but the price paid is high. The suffering of the people in their resistance, the strain of a group of citizens opposing the enforcement of the law, with its consequent effect upon the attitude of the people concerned toward the government make it wise for the government to allow the widest possible range of religious and political opinion and action. The friction of civilization and progress often tempers radical religious and political views at less cost than federal suppression. The problem remains, however, to determine the point at which toleration of radical views and practices should cease and suppression begin. No arbitrary line can be drawn--flexibility must be maintained and exercised on the side of liberality. It would be fascinating to be able to see what would have happened to polygamy had the Edmunds and Edmunds-Tucker Acts not been passed. It is possible that the practical abandonment of the practice would have been accomplished in a decade or a generation at a cost in money and suffering much less than was demanded under federal suppression.

APPENDIXES

APPENDIX I. EDMUNDS LAW

An Act to Amend Section Fifty-Three Hundred and Fifty of the Revised Statutes of the United States and for Other Purposes

Be it enacted, etc.:

Sec. 1. That section fifty-three hundred and fifty-two of the Revised Statutes of the United States, be, and the same is hereby, amended so as to read as follows, namely:

Every person who has a husband or wife living who, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter marries another, whether married or single, and any man who hereafter simultaneously, or on the same day, marries more than one woman, in a Territory or other place over which the United States have exclusive jurisdiction, is guilty of polygamy, and shall be punished by a fine of not more than five hundred dollars and by imprisonment for a term of not more than five years; but this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason of any former marriage which shall have been dissolved by a valid decree of a competent court, nor to any person by reason of any former marriage which shall have been pronounced void by a valid decree of a competent court, on the ground of nullity of the marriage contract.

Sec. 2. That the foregoing provisions shall not affect the prosecution or punishment of any offence already committed against the section amended by the first section of this act.

Sec. 3. That if any male person, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court.

Sec. 4. That counts for any or all of the offences named in sections one and three of this act may be joined in the same information or indictment.

Sec. 5. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United

States, it shall be sufficient cause of challenge to any person drawn or summoned as a juryman or talesman, first, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offence punishable by either of the foregoing sections, or by section fifty-three hundred and fifty-two of the Revised Statutes of the United States, or the act of July first, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or, second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman; and any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge, and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court. But as to the first ground of challenge before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offence named in sections one or three of this act; but if he declines to answer on any ground, he shall be rejected as incompetent.

Sec. 6. That the President is hereby authorized to grant amnesty to such classes of offenders guilty of bigamy, polygamy, or unlawful cohabitation, before the passage of this act, on such conditions and under such limitations as he shall think proper; but no such amnesty shall have effect unless the conditions thereof shall be complied with.

Sec. 7. That the issue of bigamous or polygamous marriages known as Mormon marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the first day of January, anno Domini eighteen hundred and eighty-three, are hereby legitimated.

Sec. 8. That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to

hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

Sec. 9. That all the registration and election offices of every description in the Territory of Utah are hereby declared vacant, and each and every duty relating to the registration of voters, the conduct of elections, the receiving or rejection of votes, and the canvassing and returning of the same, and the issuing of certificates or other evidence of election in said Territory, shall, until other provision be made by the Legislative Assembly of said Territory as is hereinafter by this section provided, be performed under the existing laws of the United States and of said Territory by proper persons, who shall be appointed to execute such offices and perform such duties by a board of five persons, to be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of one political party; and a majority of whom shall be a quorum. The members of said board so appointed by the President shall each receive a salary at the rate of three thousand dollars per annum, and shall continue in office until the Legislative Assembly of said Territory shall make provision for filling said offices as herein authorized. The secretary of the Territory shall be the secretary of said board, and keep a journal of its proceedings and attest the action of said board under this section. The canvass and return of all the votes at elections in said Territory for members of the Legislative Assembly thereof shall also be returned to said board, which shall canvass all such returns and issue certificates of election to those persons who, being eligible for such election, shall appear to have been lawfully elected, which certificates shall be the only evidence of the right of such persons to sit in such assembly: Provided, That said board of five persons shall not exclude any person otherwise eligible to vote from the polls on account of any opinion such person may entertain on the subject of bigamy or polygamy, nor shall they refuse to count any such vote on account of the opinion of the person casting it on the subject of bigamy or polygamy; but each house of such assembly, after its organization, shall have power to decide upon the elections and qualifications of its members. And at, or after the first meeting of said Legislative Assembly whose members shall have been elected and returned according to the provisions of this act, said Legislative Assembly may make such laws, conformable to the organic act of said Territory and not inconsistent with other laws of the United States, as it shall deem proper concerning the filling of the offices in said Territory declared vacant by this act.

APPENDIX II. EDMUNDS-TUCKER LAW

An Act to Amend an Act Entitled "An Act to Amend Section Fifty-Three Hundred and Fifty-Two" of the Revised Statutes of the United States, in Reference to Bigamy, and for Other Purposes

Be it enacted, etc.:

Sec. 1. That in any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, but shall not be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other, during the existence of the marriage relation, deemed confidential at common law.

Sec. 2. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpoena, compelling the immediate attendance of such witness, when it shall appear by oath or affirmation, to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpoena issued and served in the usual course in such cases; and in such case the usual witness-fee shall be paid to such witness so attached: Provided, That the person so attached may at any time secure his or her discharge from custody by executing a recognizance with sufficient surety, conditioned for the appearance of such person at the proper time, as a witness in the cause or proceeding wherein the attachment may be issued.

Sec. 3. That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

Sec. 4. That if any person related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law, shall marry

or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment in the penitentiary not less than three years and not more than fifteen years.

Sec. 5. That if an unmarried man or woman commit fornication, each of them shall be punished by imprisonment not exceeding six months, or by a fine not exceeding one hundred dollars.

Sec. 6. That all laws of the Legislative Assembly of the Territory of Utah which provide that prosecutions for adultery can only be commenced on the complaint of the husband or wife are hereby disapproved and annulled; and all prosecutions for adultery may hereafter be instituted in the same way that prosecutions for other crimes are.

Sec. 7. That commissioners appointed by the supreme court and district courts in the Territory of Utah shall possess and may exercise all the powers and jurisdiction that are or may be possessed or exercised by justices of the peace in said Territory under the laws thereof, and the same powers conferred by law on commissioners appointed by circuit courts of the United States.

Sec. 8. That the marshal of said Territory of Utah, and his deputies, shall possess and may exercise all the powers in executing the laws of the United States or of said Territory, possessed and exercised by sheriffs, constables, and their deputies as peace officers; and each of them shall cause all offenders against the law, in his view, to enter into recognizance to keep the peace and to appear at the next term of the court having jurisdiction of the case, and to commit to jail in case of failure to give such recognizance. They shall quell and suppress assaults and batteries, riots, routs, affrays, and insurrections.

Sec. 9. That every ceremony of marriage, or in the nature of a marriage ceremony, of any kind, in any of the Territories of the United States, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be

none, in the office of court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record, shall be prima facie evidence of the facts required by this act to be stated therein, in any proceeding, civil or criminal, in which the matter shall be drawn in question. Any person who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court.

Sec. 10. That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

Sec. 11. That the laws enacted by the Legislative Assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of any such illegitimate child are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: Provided, That this section shall not apply to any illegitimate child born within twelve months after the passage of this act, nor to any child made legitimate by the seventh section of the act entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two.

Sec. 12. That the laws enacted by the Legislative Assembly of the Territory of Utah conferring jurisdiction upon probate courts, or the judges thereof, or any of them, in said Territory, other than in respect of the estates of deceased persons, and in respect of the guardianship of the persons and property of infants, and in respect of the persons and property of persons not of sound mind, are hereby disapproved and annulled; and no probate court or judge of probate shall exercise any jurisdiction other than in respect of the matters aforesaid, except as a member of a county court; and every such jurisdiction so by force of this act withdrawn from the said probate courts or judges shall be had and exercised by the district courts of said Territory respectively.

Sec. 13. That it shall be the duty of the Attorney General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section

three of the act of Congress approved the first day of July, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: Provided, That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground shall be forfeited.

Sec. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of, or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

Sec. 15. That all laws of the Legislative Assembly of the Territory of Utah, or of the so-called government of the State of Deseret, creating, organizing, amending, or continuing the corporation or association called the Perpetual Emigration Fund Company are hereby disapproved and annulled; and the said corporation, in so far as it may now have, or pretend to have, any legal existence, is hereby dissolved; and it shall not be lawful for the Legislative Assembly of the Territory of Utah to create, organize, or in any manner recognize any such corporation or association, or to pass any law for the purpose of or operating to accomplish the bringing of persons into the said Territory for any purpose whatsoever.

Sec. 16. That it shall be the duty of the Attorney General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to carry into effect the provisions of the preceding section, and pay the debts and to dispose of the property and assets of said corporation according to law. Said property and assets, in excess of the debts and the amount of any lawful claims established by the court against the same, shall escheat to the United States, and shall be taken, invested, and disposed of by the Secretary of the Interior, under

the direction of the President of the United States, for the benefit of common schools in said Territory.

Sec. 17. That the acts of the Legislative Assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have, or pretend to have, any legal existence, is hereby dissolved. That it shall be the duty of the Attorney General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial grounds, and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity.

Sec. 18. (a) A widow shall be endowed of third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage unless she shall have lawfully released her right thereto.

(b) The widow of any alien who at the time of his death shall be entitled by law to hold any real estate, if she be an inhabitant of the Territory at the time of such death, shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen.

(c) If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

(d) When a person seized of an estate of inheritance in lands shall have executed a mortgage, or other conveyance in the nature of mortgage, of such estate, before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged or so conveyed, as against every person

except the mortgagee or grantee in such conveyance and those claiming under him.

(e) Where a husband shall purchase lands during coverture, and shall at the same time execute a mortgage, or other conveyance in the nature of mortgage, of his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands, as against the mortagee or grantee in such conveyance or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower in such lands as against all other persons.

(f) Where in such case the mortgagee, or such grantee or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged or so conveyed to be sold, either under a power of sale contained in the mortgage or such conveyance or by virtue of the decree of a court if any surplus shall remain after payment of the moneys due on such mortgage or such conveyance, and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus for her life, as her dower.

(g) A widow shall not be endowed of lands conveyed to her husband by way of mortgage unless he acquire an absolute estate therein during the marriage period.

(h) In case of divorce dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

Sec. 19. That hereafter the judge of probate in each county within the Territory of Utah provided for by the existing laws thereof shall be appointed by the President of the United States, by and with the advice and consent of the Senate; and so much of the laws of said Territory as provide for the election of such judge by the Legislative Assembly are hereby disapproved and annulled.

Sec. 20. That it shall not be lawful for any female to vote at any election hereafter held in the Territory of Utah for any public purpose whatever, and no such vote shall be received or counted or given effect in any manner whatever; and any and every act of the Legislative Assembly of the Territory of Utah provided for or allowing the registration or voting by females is hereby annulled.

Sec. 21. That all laws of the Legislative Assembly of the Territory of Utah which provide for numbering or identifying the votes of the electors at any election in said Territory are hereby disapproved and annulled; but the foregoing provision shall not preclude the lawful registration of voters, or any other provisions for securing fair elections which do not involve the disclosure of the candidates for whom any particular elector shall have voted.

Sec. 22. That the existing election districts and apportionments of representation concerning the members of the Legislative Assembly of the Territory of Utah are hereby abolished; and it shall be the duty of the Governor, Territorial Secretary, and the Board of Commissioners mentioned in section nine of the act of Congress approved March twenty-second, eighteen hundred and eighty-two, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes," in said Territory, forthwith to redistrict said Territory, and apportion representation in the same in such manner as to provide, as nearly as may be, for an equal representation of the people (excepting Indians not taxed), being citizens of the United States, according to numbers, in said Legislative Assembly, and to the number of members of the council and house of representatives, respectively, as now established by law; and a record of the establishment of such new districts and the apportionment of representation thereto shall be made in the office of the secretary of said Territory, and such establishment and representation shall continue until Congress shall otherwise provide; and no persons other than citizens of the United States otherwise qualified shall be entitled to vote at any election in said Territory.

Sec. 23. That the provisions of section nine of said act approved March twenty-second, eighteen hundred and eighty-two, in regard to registration and election officers, and the registration of voters, and the conduct of elections, and the powers and duties of the Board therein mentioned, shall continue and remain operative until the provisions and laws therein referred to to be made and enacted by the Legislative Assembly of said Territory of Utah shall have been made and enacted by said Assembly and shall have been approved by Congress.

Sec. 24. That every male person twenty-one years of age resident in the Territory of Utah shall, as a condition precedent to his right to register or vote at any election in said Territory, take and subscribe an oath or affirmation, before the registration officer of his voting precinct, that he is over twenty-one years of age, and has resided in the Territory of Utah for six months then last passed and in the precinct for one month immediately preceding the date thereof, and that he is a nativeborn (or naturalized, as the case may be) citizen of the United States, and further state in such oath or affirmation his full name, with his age, place of business, his status, whether single or married, and, if married, the name of his lawful wife, and that he will support the Constitution of the United States and will faithfully obey the laws thereof, and especially will obey the act of

Congress approved March twenty-second, eighteen hundred and eighty-two, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," and will also obey this act in respect of the crimes in said act defined and forbidden, and that he will not, directly or indirectly, aid or abet, counsel or advise, any other person to commit any of said crimes. Such registration officer is authorized to administer said oath or affirmation; and all such oaths or affirmations shall be by him delivered to the clerk of the probate court of the proper county, and shall be deemed public records therein. But if any election shall occur in said Territory before the next revision of the registration lists as required by law, the said oath or affirmation shall be administered by the presiding judge of the election precinct on or before the day of election. As a condition precedent to the right to hold office in or under said Territory, the officer, before entering on the duties of his office, shall take and subscribe an oath or affirmation declaring his full name, with his age, place of business, his status, whether married or single, and, if married, the name of his lawful wife, and that he will support the Constitution of the United States and will faithfully obey the laws thereof, and especially will obey the act of Congress approved March twenty-second, eighteen hundred and eighty-two, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," and will also obey this act in respect of the crimes in said act defined and forbidden, and that he will not, directly or indirectly, aid or abet, counsel or advise, any other person to commit any of said crimes; which oath or affirmation shall be recorded in the proper office and indorsed on the commission or certificate of appointment. All grand and petit jurors in said Territory shall take the same oath or affirmation, to be administered, in writing or orally, in the proper court. No person shall be entitled to vote in any election in said Territory, or be capable of jury service, or hold any office of trust or emolument in said Territory who shall not have taken the oath or affirmation aforesaid. No person who shall have been convicted of any crime under this act, or under the act of Congress aforesaid approved March twenty-second, eighteen hundred and eighty-two, or who shall be a polygamist, or who shall associate or cohabit polygamously with persons of the other sex, shall be entitled to vote in any election in said Territory, or be capable of jury service, or to hold any office of trust or emolument in said Territory.

Sec. 25. That the office of Territorial superintendent of district schools created by the laws of Utah is hereby

abolished; and it shall be the duty of the supreme court of said Territory to appoint a commissioner of schools, who shall possess and exercise all the powers and duties heretofore imposed by the laws of said Territory upon the Territorial superintendent of district schools, and who shall receive the same salary and compensation, which shall be paid out of the treasury of said Territory; and the laws of the Territory of Utah providing for the method of election and appointment of such Territorial superintendent of district schools are hereby suspended until the further action of Congress shall be had in respect thereto. The said superintendent shall have power to prohibit the use in any district school of any book of a sectarian character or otherwise unsuitable. Said superintendent shall collect and classify statistics and other information respecting the district and other schools in said Territory, showing their progress, the whole number of children of school age, the number who attend school in each year in the respective counties, the average length of time of their attendance, the number of teachers and the compensation paid to the same, the number of teachers who are Mormons, the number who are so-called Gentiles, the number of children of Mormon parents and the number of children of so-called Gentile parents, and their respective average attendance at school; all of which statistics and information shall be annually reported to Congress, through the Governor of said Territory and the Department of the Interior.

Sec. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

Sec. 27. That all laws passed by the so-called State of Deseret and by the Legislative Assembly of the Territory of Utah for the organization of the militia thereof or for the creation of the Nauvoo Legion are hereby annulled, and declared of no effect; and the militia of Utah shall be organized and subjected in all respects to the laws of the United States regulating the militia in the Territories: Provided, however, That all general officers of the militia shall be appointed by the Governor of the Territory, by and with the advice and consent of the council thereof. The Legislative Assembly of Utah shall have power to pass laws for organizing the militia thereof, subject to the approval of Congress.

Received by the President, February 19, 1887.

(Note by the Department of State.--The foregoing act having been presented to the President of the United States

for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.)

APPENDIX III. AMNESTY PETITION

Salt Lake, December 19, 1891.

To the President:

We, the first presidency and apostles of the Church of Jesus Christ of Latter Day Saints, beg respectfully to represent to your excellency the following facts:

We formerly taught to our people that polygamy, or celestial marriage, as commanded by God through Joseph Smith, was right; that it was a necessity to man's highest exaltation in the life to come.

The doctrine was publicly promulgated by our president, the late Brigham Young, forty years ago, and was steadily taught and impressed upon the Latter Day Saints up to a short time before September, 1890. Our people are devout and sincere, and they accepted the doctrine, and many embraced and practiced polygamy.

When the Government sought to stamp the practice out, our people almost without exception remained firm, for they, while having no desire to oppose the Government in anything, still felt that their lives and their honor as men were pledged to a vindication of their faith, and that their duty towards those whose lives were a part of their own was a paramount one, to fulfill which they had no right to count anything, not even their own lives, as standing in the way. Following this conviction, hundreds endured arrests, trial, fines, and imprisonment, and the immeasurable suffering borne by the faithful people no language can describe. That suffering in abated form still continues. More, the Government added disfranchisement to its other punishment for those who clung to their faith and fulfilled its covenants. According to our faith, the head of our church receives from time to time revelations for the religious guidance of his people. In September, 1890, the present head of the church, in anguish and prayer, cried to God for help for his flock, and received the permission to advise the members of the Church of Jesus Christ of Latter Day Saints that the law commanding polygamy was henceforth suspended.

At the great semiannual conference, which was held a few days later, this was submitted to the people, numbering

many thousands and representing every community of the people in Utah, and was by them in the most solemn manner accepted as the future rule of their lives.

They have been faithful to the covenant made that day.

At the late October conference, after a year had passed by, the matter was once more submitted to the thousands of people gathered together, and they again in the most potential manner ratified the solemn covenant.

This being the true situation and believing that the object of the Government was simply the vindication of its own authority and to compel obedience to its laws, and that it takes no pleasure in persecution, we respectfully pray that full amnesty may be extended to all who are under disabilities because of the operation of the so-called Edmunds and Edmunds-Tucker laws. Our people are scattered; homes are made desolate; many are still in prison; others are banished or in hiding. Our hearts bleed for these. In the past they followed our counsels, and while they are thus afflicted our souls are in sackcloth and ashes. We believe there are nowhere here in the Union a more loyal people than the Latter Day Saints. They know no other country except this. They expect to live and die on this soil. When the men of the South, who were in rebellion against the Government, in 1865 threw down their arms and asked for recognition along the old lines of citizenship, the Government hastened to grant their prayer. To be at peace with the Government and in harmony with their fellow citizens who were not of their faith and to share in the confidence of the Government and people, our people have voluntarily put aside something which all their lives they have believed to be a sacred principle.

Have they not the right to ask for such clemency as comes when the claims of both law and justice have been fully liquidated?

As shepherds of a patient and suffering people we ask amnesty for them and pledge our faith and honor for their future.

And your petitioners will ever pray.

Wilford Woodruff,	H. J. Grant,
George Q. Cannon,	John Henry Smith,
Joseph F. Smith,	John W. Taylor,
Lorenzo Snow,	M. W. Merrill,
Franklin D. Richards,	Anthon H. Lund,
Moses Thatcher,	Abraham H. Cannon.
Francis M. Lyman,	

APPENDIX IV. AMNESTY PROCLAMATION

By the President of the United States of America

A Proclamation

Whereas Congress by a statute approved March 22, 1882, and by statutes in furtherance and amendment thereof defined the crimes of bigamy, polygamy, and unlawful cohabitation in the Territories and other places within the exclusive jurisdiction of the United States and prescribed a penalty for such crimes; and

Whereas on or about the 6th day of October, 1890, the Church of the Latter-day Saints, commonly known as the Mormon Church, through its president issued a manifesto proclaiming the purpose of said church no longer to sanction the practice of polygamous marriages and calling upon all members and adherents of said church to obey the laws of the United States in reference to said subject-matter; and

Whereas it is represented that since the date of said declaration the members and adherents of said church have generally obeyed said laws and have abstained from plural marriages and polygamous cohabitation; and

Whereas by a petition dated December 19, 1891, the officials of said church, pledging the membership thereof to a faithful obedience to the laws against plural marriage and unlawful cohabitation, have applied to me to grant amnesty for past offenses against said laws, which request a very large number of influential non-Mormons residing in the Territories have also strongly urged; and

Whereas the Utah Commission in their report bearing date September 15, 1892, recommend that said petition be granted and said amnesty proclaimed, under proper conditions as to the future observance of the law, with a view to the encouragement of those now disposed to become law-abiding citizens; and

Whereas during the past two years such amnesty has been granted to individual applicants in a very large number of cases, conditioned upon the faithful observance of the laws of the United States against unlawful cohabitation, and there are now pending many more such applications:

Now, therefore, I, Benjamin Harrison, President of the United States, by virtue of the powers in me vested, do hereby declare and grant a full amnesty and pardon to all persons liable to the penalties of said act by reason of unlawful cohabitation under the color of polygamous or plural marriage who have since November 1, 1890, abstained from such unlawful cohabitation, but upon the express condition that

they shall in the future faithfully obey the laws of the United States hereinbefore named, and not otherwise. Those who shall fail to avail themselves of the clemency hereby offered will be vigorously prosecuted.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 4th day of
(Seal.) January, A. D. 1893, and of the Independence of the United States the one hundred and seventeenth.

BENJ. HARRISON.

By the President:
John W. Foster, Secretary of State.

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